177.

SUPREME COURT OF THE UNITED STATES.

No. ~~111~~ 23.

MARGARET DICK ET AL., APPELLANTS,

VERSUS

STEPHEN B. BALCH ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE COUNTY OF WASHINGTON, D. C.

INDEX.

	Original.	Print.
Bill of complaint	1	2
Exhibit A, referred to in bill	7	6
Bill of revivor	10	8
Exhibit No. 1, referred to in bill of revivor	14	9
Answer of Jno. Peter to complainants' bill	16	10
Order of publication against non-resident defendants	20	13
Answer of Margaret Dick, Thos. & Geo. Peter	22	14
" Wm. Ramsay and wife	27	16
Defendants' exhibit A	30	18
Replication of complainants	34	20
Notice of papers to be read, and agreement of counsel	35	20
Record in the case of W. Bowie and others against C. Smith.--J. P. No. 3.		
Bill of complaint	36	21
Answer of C. Smith	39	23
Decree	40	23
J. P No. 1.--Deed from Jno. Peter to C. Smith, trustee	41	24
J. P. No. 2.--Release to J. Peter	45	26
1st deposition of Jno. Peter	50	28
George Peter's assignment to Margaret Dick	57	32
2d deposition of Geo. Peter	58	33
Deposition of Francis Dodge	64	36
A. B. No. 1.--J. Peter to W. Fowle & Co.--22d April, 1820	66	37
A. B. No. 2.--J. Peter to W. Fowle & Co.--28th " "	67	37
1st deposition of C. Smith	69	38
Referred to in 1st deposition. C. S. No. 1.--Bill of lading	82	45
C. S. No. 2. " "	83	46
C. S. No. 3. " "	84	46
2d deposition of C. Smith	85	47
A. B.--J. Peter's order on C. Smith to pay to G. Peter	87	48

	Original.	Print.
Account marked C. S.	88	49
Account between the Farmers and Mechanics' Bank and Jno. Peter	89	49
Kurtz's certificate	90	50
Affidavit of John Rose	90	50
" J. C. Wilson	91	50
" S. B. Balch	92	51
Decree	93	51
Statement by the court	95	52
Appeal granted to the Supreme Court United States	97	54
Certificate of clerk	98	54
Writ of error	99	54
Citation and service	100	55
Appeal bond	101	55

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the second day of the same month, in the year of our Lord one thousand eight hundred and thirty-one and of the independence of the United States of America the fifty-fifth:

Present:—The Hon. WILLIAM CRANCH, *Chief Judge*,
BUCKNER THRUSTON, and } *Assistant*
JAMES S. MORSELL, } *Judges.*
HENRY ASHTON, Esq. *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others are the following, to wit:

STEPHEN B. BALCH and JOHN ROSE, Execrs. of THOMAS B. BEALL, Complainants,
against
MARGARET DICK, GEORGE PETER and others, heirs at law of ELIZABETH PETER, deceased, and JOHN PETER, defendants.

Be it remembered that heretofore, to wit, on the third day of April, in the year of our Lord one thousand eight hundred and twenty-one, the said complainants, by John Marbury, esquire, their solicitor, filed in court here the following bill of complaint and exhibit, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the District of Columbia, sitting in the county of Washington as a court of chancery.

Humbly complaining sheweth unto your honors, your orators, Stephen B. Balch and John Rose, executors of the last will and testament of Thomas B. Beall, late of the county and District aforesaid, deceased, that John Peter of county and District aforesaid, being, or pretending to be seized in fee and possessed, or otherwise well entitled, to him and his heirs, of, in, and unto the

lots or parcels of ground and premises hereinafter mentioned, and having occasion for a sum of money, did apply to the said Thomas B. Beall to lend him the sum of three thousand dollars current money, and in order to secure the repayment of the same with legal interest at and after the rate of six per centum per annum, did propose to mortgage the said lots or parcels of ground and premises, to the said Thomas B. Beall, his heirs and assigns, alleging that the same were free from all incumbrances.

And your orators further shew unto your honors, that the said Thomas B. Beall accordingly complied with the request of the said John Peter, and did, on or about the first day of May, in the year eighteen hundred and nine, advance and lend him the sum of three thousand dollars current money of the United States, to be repaid in three annual instalments of one thousand dollars each, with legal interest as aforesaid, on the first day of May, in the years eighteen hundred and ten, eighteen hundred and eleven, and eighteen hundred and twelve, and for securing the repayment of the same with such interest as aforesaid, at the times so limited, the said John Peter, by his certain deed of indenture, by way of mortgage, bearing date the fourth day of August, in the year eighteen hundred and nine, and made, and mentioned to be made, between the said John Peter of the one part, and the said Thomas B. Beall of the other part, did, for considerations therein mentioned, and for the sum of one dollar to the said John Peter in hand paid by the said Thomas B. Beall, give, grant, bargain and sell, alien, enfeoff, and confirm, to the said Thomas B. Beall, all and singular, the following described lots or parcels of ground and premises lying and being in Georgetown, and in the county and District aforesaid, to wit:—lots numbered sixty-eight, sixty-nine, seventy, sixty-one, and part of lot sixty-two in Thomas Beall's first addition to Georgetown as described in a certain deed or instrument of writing, meaning thereby a certain deed of indenture between Hezekiah Beall and Thomas B. Beall of the one part, and said John Peter of the other part, dated the thirty first day of July, year eighteen hundred and nine, in which said part of lot No. sixty-two is described as beginning at the southeast corner of lot No. sixty-one, and running eastwardly with Gay street twenty-five feet, then north to a stone at the south east corner of the grave yard about forty-four feet, then west thirty-one feet, then north, parallel with the grave yard, forty feet: the east to intersect Mrs. White's line, thence northerly with her line to the northwest corner of her lot, thence westerly to intersect the north and east corner of lot No. sixty-one, with the use and privilege of a fifteen feet alley, lying between the grave yard lot and Mrs. White's lot. To have and to hold the said lots or parcels of ground, and premises, to the said Thomas B. Beall, his heirs and assigns forever, with a proviso, however, that, if the said John Peter, his heirs, executors or administrators should truely pay, or cause to be paid, to the said Thomas B. Beall, his executors, administrators or assigns, the aforesaid sum of three thousand dollars current money, with the interest thereon as aforesaid, at the respective times limited in the said deed of mortgage for the payment of the same, then the said deed, and every thing therein con-

tained, to be void and of no effect, which will more fully appear to your honors, reference being had to the said deed, duly recorded among the land records of the county aforesaid, a copy of which is herewith filed and prayed to be taken and considered as part of this bill of complaint: the same is marked ("Compt. Ex. A.") And your orators further show, that, after the making, executing, and recording the aforesaid deed of mortgage, the said John Peter, by his deed of indenture, bargained and sold, and conveyed the residue of his interest and right of redemption, of, in, and to the said lots and parcels of ground and premises, to a certain Elizabeth Peter of the same county and District aforesaid. And your orators pray that the said John Peter and the said Elizabeth Peter may be made defendants to this their bill of complaint.

And your orators further show to your honors, that the said sum of three thousand dollars current money hath not, nor has any part of the same been paid to the said Thomas B. Beall in his life time, nor to your orators, executors as aforesaid, since his death, although the time limited for the payment of the same has long since passed, but the same is still due to your orators with a considerable arrear of interest on the same, to wit, on one thousand dollars from the first day of May, year eighteen hundred and nine, and on the residue from the first day of May, year eighteen hundred and eleven; and your orators have frequently applied themselves to the said defendants, and requested them to pay the said sum of money, with the interest thereon, and your orators hoped said defendants would have complied with their reasonable demands in this behalf, as in justice and equity they ought to have done. But now, so it is, that the said defendants, although they acknowledged the said mortgage money to be due to the said Thomas B. Beall in his life time, and have promised the Thomas B. Beall to pay the same, and have made the same promises to your orators since his death, yet now the said defendants refuse so to do, sometimes pretending that the said mortgage money has been paid off and satisfied, the contrary of which your orators charge to be true, and aver that the same is still due, together with a large arrear of interest thereon; and, at other times, said defendants pretend that the said Thomas B. Beall, in his life time, absolutely released the said mortgage money to the said John Peter, which your orators deny, and charge that, if the said Thomas B. Beall did ever execute a release of the said mortgage money, it was altogether conditional, and depended on all the other creditors of the said John Peter agreeing, in writing, to release the full amount of their respective debts, on receiving such dividend or proportion of the same as the estate or property of the said John Peter should be able to pay; that such condition was precedent, and, if it failed, any release depending on it failed also; and your orators further charge, that many of the creditors of the said John Peter withheld their assent to the said proposal, and refused to release their debts and receive the dividend as aforesaid in discharge thereof, whereby the said release, if ever executed by said Thomas B. Beall, became void and of no effect. In tender consideration of all which, and for as much as your orators are

without remedy, save in your honorable court, where matters of this sort are properly cognizable and relievable. To the end, therefore, that the said John Peter, and the said Elizabeth Peter may, upon their several and respective corporal oaths, according to the best of their knowledge, recollection and belief, full, true, perfect and distinct answers make to all and singular the matters and things herein before contained, as fully and particularly as if the same were again repeated, and they particularly interrogated, and more especially that they may set forth and show whether he, the said John Peter, did not pretend to be seized in fee of the said lots or parcels of ground; whether the deed or instrument mentioned in said deed of mortgage to contain the description of said part of lot No. sixty-two, is not the same as heretofore mentioned, and if not, what deed or instrument of writing is there intended, and what is the true description of said part of lot sixty-two, and whether he did not apply to the said deceased to advance and lend him the said sum of money, or some other sum of money, and whether said deceased did not lend him the said sum of three thousand dollars upon the terms and conditions hereinbefore mentioned; and whether to secure the repayment of the same, with such interests as aforesaid, he did not execute and deliver the said deed of mortgage in that behalf before mentioned, and whether the said sum of money, to wit, the sum of three thousand dollars or any part thereof, with the interest, was paid to the said Thomas B. Beall in his life time, or any other person, whether the said T. B. Beall be not dead, leaving your orators his executors, and whether he, said John Peter, has not neglected and refused to pay the said mortgage money, and the interest thereon, to your orators since the death of said deceased; whether said defendants do not pretend the said T. B. Beall, in his life time, made and executed a release of said mortgage, absolute and unconditional; whether the said release, if executed at all, was not voluntary and without any consideration, and made upon the condition, expressed or implied, that the same should be void and of no effect unless all the creditors of the said defendant, John Peter, should agree, in writing, to release their debts, and receive a dividend of the goods and effects of said John Peter in full payment and discharge of the same; and whether some of the creditors of said John Peter did not so refuse to release their debts, and receive such dividend in payment and full discharge thereof; and that the said John Peter may be decreed to come to a fair account of the principal and interest due and owing to your orators as aforesaid on said mortgage, and that said defendants may be decreed to pay the same to your orators by a short day, to be named by this honorable court, together with your orators' cost, and, in default therof, that some fit and proper person may be appointed now by your honorable court a trustee to sell the said lots or parcels of ground and premises, upon such terms as may to your honors seem proper and equitable, and, after satisfying the expenses of such sale, may pay to your orators the said sum of three thousand dollars, together with the interest thereon, and their cost in this behalf expended; and that your honors would grant them what other relief in the premises to your honors may appear right

and proper: may it please your honors to grant your orators the United States writ of subpœna, &c.—and they pray, &c.

JOHN MARBURY,
Sol. for Complainant.

Complainants' exhibit A.

Exhibit A. Mortgage from John Peter to T. B. Beall.

This indenture made this 4th day *of* of August, eighteen hundred and nine, between Thomas B. Beall, of Georgetown, District of Columbia, of the one part, and John Peter, merchant of Georgetown, District of Columbia, of the other part. Whereas the said John Peter now stands justly indebted unto the said Thomas B. Beall in the full and just sum of three thousand dollars current money of the United States, with legal interest thereon from the first day of May last, payable one thousand dollars on the first day of May, eighteen hundred and ten; one thousand dollars payable on the first day of May, eighteen hundred and eleven; and one thousand dollars payable on the first day of May, eighteen hundred and twelve; which sums of money the said John Peter hath agreed to secure to the said Thomas B. Beall, to be paid at the times aforesaid, by a mortgage on the herein after particularized premises.

Now, this indenture witnesseth that the said John Peter, in consideration of the premises, and also in consideration of the sum of one dollar current money of the United States to him in hand paid by the said Thomas B. Beall, at or before the ensealing and delivery of these presents, the receipt whereof he doth hereby acknowledge, hath given, granted, bargained and sold, aliened, enfeoffed, and confirmed, and by these presents doth give, grant, bargain and sell, alien, enfeoff, and confirm unto the said Thomas B. Beall, all and singular, the hereinafter described lots and premises, lying and being in Thomas Beall of George's first additional to Georgetown, in the District aforesaid, that is to say, all those lots No. sixty-eight, sixty-nine, and seventy; sixty-one, and part of lot number sixty-two, as heretofore described in a certain deed or instrument of writing, and which will more fully appear by reference to the said deed or instrument of writing, together with all and singular the rights, members, privileges, advantages, and appurtenances thereunto belonging, or in any wise appertaining, to have and to hold the said lots, and premises, with the appurtenances aforesaid, unto the said Thomas B. Beall, his heirs, and assigns forever, and to no other use; and the said John Peter for himself, his heirs, executors, or administrators, doth hereby covenant, grant, and agree to and with the said Thomas B Beall, his heirs and assigns, that he and they shall and will, from time to time, and at all times hereafter, at the reasonable request, and proper cost and charge in the law of the said Beall, his heirs and assigns, make, execute, and acknowledge any other further deed or deeds for the more effectually carrying into effect the true intent of these presents; provided always, nevertheless, and these presents are upon this condition, if the said John Peter, his heirs, executors or administrators do, and shall well and truly pay, or cause to be paid, unto the said Thomas B. Beall, his executors, adminis-

trators, or assigns, the aforesaid sum of three thousand dollars, current money, with legal interest thereon from the first day of May last, that is to say, one thousand dollars, with interest thereon, on the first day of May, eighteen hundred and ten; and one thousand dollars, with interest thereon, on the first day of May, eighteen hundred and eleven; and one thousand dollars, current money, with legal interest thereon, payable on the first day of May, eighteen hundred and twelve; then these presents, and every matter therein, to be void and of no effect. In testimony whereof the said John Peter hath set his hand, and affixed his seal, the day and year aforesaid.

JNO. PETER. [SEAL.]

Signed, sealed, and delivered, in presence of
THOS. CORCORAN,
JNO. OTT.

WASHINGTON COUNTY, *District of Columbia, to wit:*

On this fourth day of August, eighteen hundred and nine, John Peter, the mortgagor named in the foregoing instrument of writing, personally appeared before us, the subscribers, two of the justices of the peace for the county aforesaid, and acknowledged the aforegoing instrument to be his act and deed, and delivered for the purposes therein contained, according to the act of Assembly.

Acknowledged and certified before us,

THOS. CORCORAN.
JNO. OTT.

DISTRICT OF COLUMBIA, *County of Washington, sct.*

In testimony that the foregoing and annexed deed is a true copy taken from the land records of the county aforesaid,—

I have hereto subscribed my name, and affixed the seal of the circuit court for the county aforesaid, this 29th day of March, 1828.

WM. BRENT, *Clk.* [L. S.]

Thereupon, subpœnas issued as prayed for in said bill of complaint, and made returnable on the first Monday of October next.

At which said first Monday of October, in the year one thousand eight hundred and twenty-one, come into court here, the said complainants, by their solicitor aforesaid, and the marshal to whom the summons aforesaid was issued, makes return that he had summoned both the defendants, and, they being called, appear in court here by F. S. Key, esquire. Thereupon further process of and upon the premises aforesaid, with the consent of the complainants and defendants, by their solicitors aforesaid, and by order of the court, is continued until the second Monday of April next, before which day the said Elizabeth Peter departed this life, and the complainants, by their solicitor aforesaid, on the sixteenth day of March, eighteen hundred and twenty-two, filed in court here the following bill of revivor and exhibit.

Bill of revivor.

To the honorable the Judges of circuit court of the District of Columbia, sitting in Washington county as a court of chancery:

Humbly complaining, sheweth unto your honors, your orators, John Rose and Stephen B. Balch, executors of the last will and testament of Thomas B. Beall, late of the county and District aforesaid, (deceased,) that your orators, in or about the April term, which was in the year of our Lord eighteen hundred and twenty-one, exhibited their bill of complaint into this honourable court against John Peter and Elizabeth Peter, to forclose a certain mortgage, and to be relieved touching the matters therein contained; to which said bill both the said defendants being served with process of subpœna, the said defendant Elizabeth appeared as in and by the said bill, subpœnas, and proceedings thereupon had, remaining as of record in this honorable court, relation being thereunto had, may more fully and at large appear. And your orators further showeth unto your honors, that, before any other proceedings were had in the said cause, (that is to say,) about the day of , in the year eighteen hundred and twenty-one, the said Elizabeth Peter died, by means whereof the said cause and proceeding, as to her, became and are abated. And your orators further show unto your honors that the said Elizabeth did, in her life time, make her last will and testament in writing, dated on or about the day of , in the year eighteen hundred and , and did therein demise the said real property, particularly mentioned and described in the said original bill. first to Margaret Dick, upon a certain condition in the last will and testament contained, to wit, for the payment of certain sums of money to Thomas Peter, George Peter, and the children of David Peter, late of the county of Washington and District of Columbia, (dec'd.) to wit, James B. Beverly, and Jane his wife, late Jane Peter, Elizabeth Peter, William, Hamilton, and James Peter; and if she, said Margaret Dick, should not elect to take the said property, and perform the condition of the said devisee, then the said Elizabeth did, by her said last will and testament, devise the said property to Thomas Peter, George Peter, and the children of the said David Peter before mentioned, upon condition that they should pay a certain sum of money to the said Margaret, both the said aforementioned devisees being in fee simple, as will appear by an extract from the said will herewith filed, and prayed to be taken and considered as part of this bill of complaint, the same being marked No. 1, whereby it appears that all the said beforementioned persons are interested in the said property, in and by the said last will and testament, and your orators are entitled to have the same benefit and relief against the said Margaret Dick, George Peter, Thomas Peter, and James B. Beverly, and Jane his wife, late Jane Peter, Elizabeth Peter, William, Hamilton, and James Peter, children of said David Peter, as your orators should or might have had against the said Elizabeth Peter. To the end, therefore, that the said suit may stand revived, and be in the same plight and condition against the said Margaret Dick, George Peter, Thomas Peter, and James B. Beverly, and Jane his wife, Elizabeth, William, Hamilton, and James Peter, the children of said

David Peter, as the same was at the death of the said Elizabeth Peter, and that your orators may have the same benefit thereof, or that said defendants may show good cause to the contrary. May it please your honors to grant to your orators the United States' most gracious writ of subpœna, to be directed to the said Margaret Dick, George Peter, Thomas Peter, and James B. Beverly, and Jane his wife, Elizabeth Peter, William, Hamilton, and James, thereby commanding them respectively, at a certain day, to be and appear before your honors in this honorable court, then and there to show cause (if they can,) why the said proceedings, so abated as aforesaid, should not be revived, and be in the same plight and condition as the same were at the time of the abatement thereof, and your orators be further relieved in the premises as to your honors may seem right and equitable; and your orators further show that, of the said aforementioned children of the said David Peter, the said Elizabeth hath, since the filing of this bill of complaint, intermarried with a certain William Ramsay, and the said William, Hamilton, and James, are minors: your orators, therefore, pray that the said William Ramsay may be made a party to this bill of complaint, and a subpœna may issue accordingly; and, further, that your honors would cause a commission to issue to some fit and discreet person to appoint a guardian to answer and defend this suit in behalf of said infants according to law.

And your orators further show that, since the filing of this bill of complaint, the defendant, John Peter, has removed from the District of Columbia and gone to reside in Jefferson county, in the State of Virginia, as your orators are informed and believe, and that he has left no property within this District, and your orators have no way of compelling said defendant to answer their bills. Your orators therefore pray your honors to grant them an order of publication according to the usage and practice of this court, and the law in such cases provided, and that the said John Peter be required to come in and answer this bill, by a day to be fixed by your honors, or the same to be taken for confessed, and such decree passed thereon as to your honors shall appear equitable and proper to be granted, and your orators will pray.

JOHN MARBURY,
for Comp'ts.

Extract of the last will and testament of Elizabeth Peter. Exhibit No. 1.

"Imprimis, I give and bequeath unto my daughter, Margaret Dick, six lots of ground, situate in Georgetown, in the District of Columbia, being the lots which I purchased of John Peter, and now in my possession, with the brick house and other buildings, and other improvements thereon, with the appurtenances, for the term of two years from and after my decease; and, if the said Margaret Dick should be desirous of having and possessing the said lots in fee simple, then, and in that case, upon her paying one thousand four hundred and thirty-seven pounds ten shillings current money of Maryland to Thomas Peter, the children of my

deceased son David Peter, and to George Peter, their executors, administrators, and assigns, that is to say, one third part to my son Thomas Peter, his heirs, executors, administrators, or assigns; one third to the children of my son David Peter, or the survivor or survivors of them, to be equally divided *amongst* them, share and share alike, their executors, administrators, and assigns; and to my son George Peter, his executors, administrators, and assigns, the remaining one-third.

It is my will, and I do hereby give and bequeath the said lots of ground, with the appurtenances, to the said Margaret Dick, her heirs and assigns, forever, in fee simple absolute, but, in case the said Margaret Dick should not be disposed to pay the said sum of fourteen hundred and thirty-seven pounds ten shillings for the purposes above mentioned, then, and in that case, and from and after the said term of two years from my decease, I give and bequeath the said lots of ground, with the improvements and appurtenances, unto my said sons Thomas and George Peter, and the children of my son David Peter, or the survivor or survivors of them, their and each of their heirs and assigns, as tenants in common, and not as joint tenants, to be equally divided between them, share and share alike; that is, one third to Thomas, one third to George Peter, and one third to the said children of David Peter; and in case of the death of either of them, the said Thomas and George Peter, the child or children of such deceased to take their father's portion, upon condition of their paying to the said Margaret Dick, her executors, administrators, or assigns, one thousand pounds current money of Maryland."

I certify that the aforegoing extract is truly taken from the original, the last will and testament of Elizabeth Peter, filed and recorded in my office.

Witness, my hand and seal of office, this 5th day of February, in the year 1822.

HENRY C. NEALE, [L. S.]
Reg. Wills.

Thereupon, subpœnas issued as prayed for, returnable on the second Monday of April next; at which said second Monday of April, in the year one thousand eight hundred and twenty-two, the marshal makes return on the subpœnas aforesaid, that he had summoned James B. Beverly, but could not find the others.

Thereupon, the said cause, and all things thereto relating, was, by order of the said court, placed upon the rule docket to be got ready for hearing at rules held at the clerk's office, by the clerk of this court; and said cause was regularly continued at rules until the first Monday of January, eighteen hundred and twenty-four, when John Peter, one of the defendants, by Walter Jones, esquire, his attorney, filed in the cause here the following answer, to wit:

J. Peter's answer.

To the honorable the Judges of the circuit court of the District of Columbia, sitting in Washington county as a court of chancery:

The answer of John Peter, one of the defendants to the bill of complaint of John Rose and Stephen B. Balch, executors of Tho-

mas B. Beall: To so much of said bill as this defendant is advised it is material for him to answer, says, it is true that, on the 4th day of August, 1809, he was indebted to the late Thos B. Beall in the sum of three thousand dollars, with interest from the 1st day of May, 1809, for which said sum, the said Thomas B. Beall held this defendant's three several notes, under seal, for one thousand dollars each. That to secure the payment of the said sum of money, with the interest that might be due thereon, this defendant executed the deed of mortgage in said bill of complaint mentioned, and conveyed the lots Nos 68, 69, 70, 61, and part of lot 62, in Thomas Beall of George's first addition to Georgetown, (being the same property purchased by this defendant of Hezekiah Beall and Thos. B. Beall, and particularly described in their deed to this defendant, dated 31st July, 1809,) and duly recorded to the said Thomas B. Beall, his heirs and assigns, with a proviso for the redemption thereof, upon the payment of the said sum of money. It is further true, that the said sum of three thousand dollars, and interest, is still unpaid by this defendant to the said Thos. B. Beall, deceased, or his representatives, except, as this defendant alleges, that he paid the interest on two thousand dollars of said debt, up to the 1st May, 1811, as will appear credited on the respective notes; also from the claims to be allowed the sum of six hundred fourteen dollars and forty-eight cents due from the said Thomas B. Beall in his life time, for two years and five months' boarding at the rate of two hundred and fifty dollars per annum, which comprise all the payments made by this defendant towards the discharge of the aforesaid debt.

To that part of the said bill of complaint, referring to a release executed and delivered by the said Thos. B. Beall to this defendant, he can only detail a statement of circumstances which led to the execution and delivery of said release.

This defendant from the loss of his warehouse by fire, in which was consumed a large amount of groceries and various merchandise, became unable to pay all his debts, and consequently unable to prosecute his business. A number of his friends and some of his creditors assembled, among others, the late Thomas B. Beall, when it was proposed to this defendant that he should apply to his creditors, and obtain their consent, in writing, to release him from their respective claims, and receive in full satisfaction and discharge thereof a dividend of the proceeds of such part of this defendant's property as had escaped the destructive fire; that then defendant's friends would loan their names or money to the amount of sixteen or twenty thousand dollars to enable him to commence business again. With the intention of carrying this measure into execution, an instrument of writing was prepared, executed, and delivered, conveying all the defendant's effects to Clement Smith, as trustee, to sell the same, and make distribution equally amongst all this defendant's creditors, at the same time an instrument of release was prepared, executed, and delivered to this defendant, by many creditors, and among them the late Thomas B. Beall, which release is, as defendant is informed and believes, in the hands of Walter Jones, Esq., so that this defendant connot have access to it.

He is further informed, and believes, that John Rose, one of the complainants, hath a copy of said original release, either in his own hands, or the hands of his counsel, which he can produce if the original is mislaid or lost; this defendant states that said release contained no stipulation in the instrument, to the best of his recollection and belief, that it was to be void and inoperative, unless signed by all this defendant's creditors, nor was any thing said at the time of its execution and delivery to this defendant, (as defendant recollects and believes,) either that it was, or was not to be void and inoperative in such case, but the said release purported to be an instrument by which the creditors executing and delivering it, agreed to release this defendant from their respective debts, and no stipulation to any such effect was made, (as this defendant believes,) by any of the creditors who signed the same, and, to the best of defendant's recollection and belief, it was executed and delivered by the said late Thomas B. Beall without any such stipulation and proviso. The refusal of some of defendant's creditors to sign said release, caused a refusal on the part of many who previously agreed to loan their money on credit to re-establish this defendant in business again, whereby the favor shown this defendant on the advantage contemplated and intended at the said meeting of his friends and some of his creditors, was entirely frustrated; the trust executed to C. Smith, or the money in his hands, was subsequently, by a decree of your honorable court, distributed among certain creditors, according to the directions and appointment of this defendant.

And this defendant further states, that the said property, so mortgaged to the said Thomas B. Beall, was sold and conveyed by this defendant to the late Elizabeth Peter, as will appear by defendant's deed to her of record in this court, on the day the same bears date, for which defendant received from said Elizabeth Peter the full amount of the purchase money, to wit, the sum of six thousand five hundred dollars; and that the said sale to the said Elizabeth, and the payment of the said purchase money, were known to the said Thomas B. Beall immediately after the said transactions took place.

And this defendant further states, that the representatives of said Elizabeth Peter claim the benefit and advantage of the said release, so made, executed, and delivered, by the said Thomas. B. Beall.

Without this, that any other matter and thing in the said bill continued, and not herein sufficiently answered, confessed and avoided, traversed or denied is true; and defendant prays to be here dismissed.

JOHN PETER.

DISTRICT OF COLUMBIA, *Washington County, sct.*

This 24th day December, 1823, personally appears John Peter, and makes oath that the facts, matters, and things stated in the aforegoing answer in chancery, so far as stated of his own know-

ledge, are true, and, so far as stated of the knowledge of others, he believes them to be true.

Sworn to before me,

DANL. BUSSARD,
Justice of the Peace for said C'ty and District.

The cause was afterwards regularly continued at rules, until the first Monday of April, eighteen hundred and twenty-six, when the following order of publication against the non-residents was made in the cause.

STEPHEN B. BALCH and JOHN ROSE, Executors of THOMAS W. BEALL,

vs.

JAMES B. BEVERLY and JANE his wife, WILLIAM PETER, HAMILTON PETER, and JAMES PETER, children of DAVID PETER, deceased, and others.

DISTRICT OF COLUMBIA,

Washington County, Circuit Court.

In Chancery at April rules, 1826.

Order of publication against non-resident defendants.

The bill and the proceeding on the part of the complainant in this case, state, that John Peter, about the 4th day of August, 1809, by his deed of mortgage of that date, acknowledged himself indebted to Thomas B. Beall in the sum of three thousand dollars current money, and conveyed to the said Beall in fee simple, the *the* following real estate, lying in Georgetown, and District aforesaid, to wit: lots number 68, 69, 70, 61, and part of lot number 62, all in Thomas Beall's first addition to Georgetown, with proviso in said deed contained, that the same should be void on the payment of the said sum of money, and the interest thereon, at the time limited therefor, in said deed; that, after the execution and delivery of said mortgage, the said John Peter, by deed, sold and conveyed his remaining interest in the said real estate to Elizabeth Peter; that the said Elizabeth Peter has since died, and, by her last will and testament, the said premises are devised to Margaret Dick upon certain terms, with which, should she refuse to comply, then the same are devised to Thomas Peter, George Peter, and the children of David Peter, deceased; that the time limited for the payment of the said mortgage money has long since passed, and the said sum of three thousand dollars, with a considerable arrear of interest, is still unpaid, and is now due and owing to the complainants, executors as aforesaid; that the defendants, James B. Beverly, and Jane his wife, William Peter, Hamilton Peter, and James Peter, are the children of David Peter, and are non-residents of this District, and live, as complainants are informed, in the state of Virginia: the bill prays that the said John Peter and the other defendants may be decreed to pay the complainant the said mortgage debt and interest; and, in default thereof, that the said premises may be sold for the payment of the same, and because the said James B. Beverly, and Jane his wife, Willi-

Beall replied that his claim was an old one of long standing, which he had no wish to assert, and that he "relinquished it most cheerfully."

And these respondents further answering, say, that, soon after the death of the said Thomas, the said Elizabeth for the first time heard of the said mortgage debt, and that the executors of the late Thomas B. Beall intended to prosecute it against her. She immediately caused application to be made to the said John Peter on the subject, who said the said debt was released, and produced the instrument of release before referred to, and, after having the use of it for the inspection of her counsel, the same was returned to the said John Peter: without this, that any other matter or thing contained in complainant's bill, not herein well and sufficiently answered, confessed and avoided, traversed or denied, is true, and respondents pray that the said bill may be dismissed, and that they may be allowed their costs in this behalf wrongfully sustained.

MARGARET DICK,
GEO. PETER,
THOMAS PETER.
KEY & DUNLOP,
Sol. for Defts.

DISTRICT OF COLUMBIA, *Washington County, sct.*

This, the twenty-eighth day of April, 1825, Margaret Dick, Thomas Peter, and George Peter, severally appeared before the subscriber, a justice of the peace for the county and District aforesaid, and made oath that the facts and matters stated in the answer in chancery are true, so far as stated of their own knowledge, and, so far as stated of the knowledge of others, they believe them to be true.

Sworn to before,

THOS. CORCORAN.

Answers of William Ramsay and wife.

The joint and several answer of William Ramsay, and Elizabeth Ramsay his wife, to the bill of complaint of John Rose and Stephen B. Balch, executors of the last will and testament of the late Thomas B. Beall:

These defendants, saving and reserving to themselves all benefit of exception to the manifold errors, untruths, and misstatements, in the said bill contained, and protesting that the same is without equity, and that they are not bound by the laws of the land to answer the same, yet, for answer thereto, or to so much thereof as it may be thought they ought to respond to, they say:

That they have been informed, and verily believe, that the late Elizabeth Peter, under whose will these respondents have become interested in the lots and property described in complainant's bill, did make a fair and bona fide purchase of the said lots and property from the defendant, John Peter, and received a conveyance therefor, duly executed and recorded, as will appear by the deed herewith exhibited, being a true copy from the record, marked defendant's exhibit "A."; and these defendants further say, that

the said late Elizabeth paid to the said John, before the execution of said deed "A," the sum of six thousand five hundred dollars, the agreed amount of the purchase money, and the full value of the property, without any knowledge or suspicion that the same was bound or incumbered by lien, in the shape of mortgage or otherwise, to the late Thomas B. Beall.

These defendants have no certain knowledge of the transactions between the said John Peter and the said Thomas B. Beall, and can therefore neither admit or deny that the said John ever owed to the said Thomas B. the said sum of three thousand dollars, and executed the mortgage as claimed and contended for by the complainants; and these defendants require proof thereof on the part of complainants, and also proof that the said pretended debt and mortgage are still subsisting and unsatisfied, if they ever had any legal validity.

And these defendants, further answering, say, that they are advised that if said debt was a bona fide debt, due and owing from the said John Peter to the said Thomas B. Beall, that the complainants have no right to enforce the payment thereof out of the lots and property so conveyed to the said Elizabeth, and that they have good reason to believe that the said Thomas B. Beall never expected or claimed to enforce payment thereof by a sale of said property.

Because, in the 1st place, the said Thomas, though he lived till the fall of the year, 1820, more than eleven years after the execution of the said pretended mortgage, never did assert any claim, or even intimate to the said Elizabeth, or to any of her friends or advisers, the existence of such claim.

2dly. Because the said Thomas well knew the said Elizabeth had paid the full value of the property, and the amount of the purchase money; and, from his habits of intimacy with the said John, having boarded with him for several years before his death, and granted to the principal debtor such an unreasonable and extended credit, without the slightest intimation to said Elizabeth, that he looked to her property for payment, would have thought it, as these defendants now think it, inequitable and unjust to attempt to set up and enforce said pretended mortgage.

And, lastly, because the said Thomas B. Beall did, on or about the 27th April, 1820, duly execute and deliver to the said John Peter a release, in writing, under his hand and seal, of the said mortgage debt, the legal effect of which instrument of writing, these defendants are advised, operates to discharge the said lots and property from all claim of the complainants. These defendants are informed that the said original release is in the hands of Walter Jones, esquire; and, when produced, they pray the same to be taken as part of this their answer.

Without this, that any other matter or thing contained in complainant's bill, not herein well and sufficiently answered, confessed, and avoided, traversed or denied, is true; and defendants pray to be hence dismissed with their costs in this behalf wrongfully sustained.

KEY & DUNLOP,
Sol'rs for Deft's.

DISTRICT OF COLUMBIA, *county of Washington, sct.*

This sixth day of April, 1825, William Ramsay, and Elizabeth Ramsay his wife, personally appear before the subscriber, a justice of the peace for the county and District aforesaid, and severally make oath that the facts and matters stated in the foregoing answer in chancery are true so far as stated of their own knowledge, and, so far as stated of the knowledge of others, they believe them to be true.

Sworn to before

JOSEPH FORREST, *J. P.*

(Defendants' Exhibit A.)

Defendants' exhibit A. Deed from John Peter to Elizabeth Peter.

This indenture, made this sixteenth day of April, eighteen hundred and ten, between John Peter, of Georgetown, District of Columbia, of one part, and Elizabeth Peter, of same place, of the other part, witnesseth that the said John Peter, for and in consideration of the sum of six thousand five hundred dollars current money of the United States to him in hand paid, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, delivered, enfeoffed, and confirmed, and, by these presents, do give, grant, bargain, sell, deliver, enfeoff, and confirm, unto her, the said Elizabeth Peter, her heirs and assigns for ever, the following described parcels of ground or lots, and their appurtenances, as purchased by the said John Peter of the heirs of Col. George Beall. Reference to their deeds will more fully appear, viz. Lot No sixty-eight, sixty-nine, seventy, and part of lot No. sixty-two, beginning, for the said part, at the south and east corner of lot No. sixty-one, and running eastwardly with gay street seventy-five feet; thence, northwardly, to a stone at the southeast corner of the grave-yard about forty four feet; thence, west, thirty-one feet; thence, northwardly, parallel with the grave-yard, forty feet; thence, east, to intersect Mrs. White's line; thence, northwardly, with her line, to the northwest corner of her lot; thence, westwardly, to intersect the north and east corner of lot No. sixty-one, with the use and privileges of the fifteen alley, lying and being between the grave-yard lot and Mrs. White's lot, lying and being in Beall's first addition to Georgetown, commonly called Thomas Beall of Geo. first addition to Georgetown; and the said John Peter, by these presents, do give, grant, bargain, sell, deliver, enfeoff, and confirm, unto the said Elizabeth Peter, her heirs and assigns for ever, all his right, title, claim, and interest, of, in, and to the said lots, and part of lot, as purchased of the heirs of Col. Geo. Beall, by John Peter, viz. lot No. sixty-eight, sixty-nine, seventy, sixty-one, and part of lot No. sixty-two, together with the use and privileges of the fifteen alley, lying and being between the grave-yard lot and Mrs. White's lot, in Beall's first addition to Georgetown, commonly called Thomas Beall of Geo. first addition to Georgetown, as aforesaid; to have and to hold the said described lots, and part of lot, of ground, with all the appurtenances and improvements thereto belonging and appertaining unto the said Elizabeth Peter, her heirs and assigns forever, and to and for no

other use, intent, or purpose, whatsoever. And the said John Peter, for himself, his heirs, executors, administrators, and assigns, do hereby covenant, grant, promise and agree to and with the said Elizabeth Peter, her heirs, executors, administrators, and assigns, that he, the said John Peter, and his heirs, shall and will for ever warrant and defend, by these presents, the said described parcels or lots of ground, with their and every of their appurtenances and improvements, as above described, unto the said Elizabeth Peter, her heirs and assigns, for ever, against him, the said John Peter, and his heirs, and all manner of persons whatsoever, claiming from or under him, the said John Peter, or his heirs, or any or either of them; and the said John Peter doth hereby further covenant and agree, for himself and his heirs, at any future time, to execute any further instrument of writing for the more effectually conveying to the said Elizabeth Peter, or her heirs, the above described property, with all and every of their appurtenances.

In testimony, whereof, the said John Peter hath hereunto set his hand, and affixed his seal, the day and year above mentioned.

JOHN PETER. [L. S.]

Signed, sealed, and delivered in presence of
THOS. CORCORAN, JNO. OTT.

Received this 16th day of April, 1810, of Mrs. Elizabeth Peter, the sum of six thousand five hundred dollars current money of the United States, being the consideration money within mentioned.

JOHN PETERS.

Test,
THOS. CORCORAN, JNO. OTT.

COUNTY OF WASHINGTON, *District of Columbia, sct.*

On this sixteenth day of April, eighteen hundred and ten, personally appeared before us, the subscribers, two of the justices of the peace for the county aforesaid, John Peter, and acknowledged the aforegoing deed or instrument of writing to be his act and deed, and the lots and improvements therein mentioned to be the estate of Elizabeth Peter, and delivered for the purposes therein contained. At same time also appeared before us, Harriet Peter, wife of the said John Peter, who being by us privately examined, apart from and out of the presence and hearing of her said husband, did acknowledge the said indenture to be her act and deed, and the lots or portion of ground therein mentioned to be the right and estate of the therein named Elizabeth Peter, and she did relinquish and release all her right, title, and claim of dower, of, in, and to said property; and she declared she made this her acknowledgment and relinquishment willingly and freely, and without being induced thereto by fear of threats *of*, or ill usage by her said husband, or fear of his displeasure. According to law, acknowledged before

THOS. CORCORAN.
JNO. OTT.

Whereas the within described property, having been purchased by John Peter of the heirs of Col. George Beall, and conditions being stipulated between them, relative to lot No. sixty-two, in Thomas Beall of Geo. first addition to Georgetown, therefore, be it expressly understood, and it is hereby agreed by the parties named in the aforegoing deed of indenture, and as forming a part of the consideration of the purchase of the therein described property, that lot No. sixty two shall not, in any future time to come, be used by the said grantee, or by any other person or persons, for a burying-place or grave-yard, notwithstanding a part of said lot hath heretofore been appropriated to the purpose aforesaid, and is now enclosed as a grave-yard. It is further understood and agreed that the said Elizabeth Peter, her heirs and assigns, to pay the taxes on the fifteen feet alley which has been left open adjoining said grave-yard.

In testimony whereof, I set my hand and seal, this 16th day of April, 1810.

JNO. PETER. [L. S.]

The cause was continued regularly at rules until the first Monday of December, eighteen hundred and twenty-seven, when the complainants, by their solicitor aforesaid, filed here the following replication.

Replication. The complainants, saving and reserving to themselves all and manner of exceptions all. and so forth, for replication to the answers of said defendants, say, that they do and will aver, maintain, and prove their said bill to be true and sufficient in the law to be answered unto by said defendants, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the complainants, without that, and so forth.

The continuances were regularly entered in this cause, until the first Monday of October, in the year eighteen hundred and twenty-eight, when the complainants, at rules, by their said solicitor, set said cause for hearing on the bill, answers, exhibits, and replication for the first Monday of December next.

At which said first Monday of December, in *in* the year eighteen hundred and twenty-eight, come into court here as well the complainants as the defendants, by their solicitors aforesaid. Thereupon, further proceedings of and upon the premises aforesaid, by consent of the parties, and by order of the court, is continued until the first Monday of May next.

At which said first Monday of May, in the year eighteen hundred and twenty-nine, come again into court here as well the said complainants as the defendants, by their solicitor aforesaid, and file in the said cause the following paper:

Notice of papers to be read and agreement of counsel. Upon application to Mr. Jones, by defendants' counsel, to give to them paper J. P. No. 2, referred to in John Peter's answer in this cause, the same was by Mr. Jones delivered to Key and Dunlop, together with the paper J. P. No. 1, which paper, J. P. No. 1, is now produced upon the call of J. Marbury, complainants' counsel.

J. DUNLOP, *for Deft's.*
JNO. MARBURY, *for Plff's.*

ROSE AND BALCH, exr's of BEALL,
vs.
JNO. PETER and others.

Messrs. KEY AND DUNLOP:

Take notice, that, on the trial of this case, I shall offer to read in evidence, for the above complainants, the bill of complaint and other proceedings in the case of Washington Bowie and others *vs.* Clement Smith, on the chancery side of the circuit court of the District of Columbia for Washington county.

JNO. MARBURY.

Nov. 25, 1828.

It is agreed that complainants or defendants, if they please, may read from the land records the deeds relating to this property, or any other deeds on record that may be evidence.

MARBURY, *for Comp't.*
J. DUNLOP, *for Deft's.*

All objection is waived to the examination of Geo. Peter and John Peter, as witnesses, without first obtaining the order of court for that purpose, and their depositions may be read in evidence subject to all other objections to their competency and admissibility.

JNO. MARBURY, *for Compt's.*
JAS. DUNLOP, *for Deft's.*

The following is the record of the case of Washington Bowie and others against Clement Smith, beginning with the bill.

Record in the case of W. Bowie and others against C. Smith.

To the circuit court of the District of Columbia for the county of Washington, in chancery, sitting:

J. P. No. 3. Bill of complaint.

Humbly complaining, show unto the court, your orators, Washington Bowie, George Peter, George C. Washington, and David and William K. Corry, and John Peter, that some time on or about the 24th day of April, 1820, your orator, John Peter, executed a deed of that date, purporting to be an assignment to one Clement Smith, (who, your orators pray, may be made a defendant to this bill,) certain merchandises, and choses in action, in a schedule to the said deed annexed, particularly mentioned and set forth, in trust to be disposed of, collected, and gathered in by said defendant, and the proceed to be applied to the payment and satisfaction, *pari passu*, of all the debts due from your said orator to his creditors severally and respectively; provided such creditors should all come in and duly release your said orator from all his said debts, and agree to accept the said assignment in full satisfaction of the same: but if such creditors should not release your said orator, then the said trust was to be wholly inoperative and void. That the said defendant has forborne to take upon himself the execution of the said trust, waiting for the event of such creditors ac-

ceding to the terms of said assignment; further than this, that the said defendant did provisionally receive out of the assets included in said schedule, the sum of five thousand two hundred and twenty dollars; but as to all the residue of the said assets, the said defendant has entirely renounced the said trust, the said creditors having refused so to release your said orator as aforesaid, and none of the same ever having come forward to claim the benefit of the said trust, but having altogether renounced and abandoned the same. And your orators further show that all the said property, moneys, and choses in action, having reverted to your said orator, John Peter, in consequence of such renunciation and abandonment of said trust, he has proceeded to dispose of and apply the same to the discharge and satisfaction of his debts, under his own direction, and at his own discretion; and, among other of the said assets, has recently assigned to your other orators, for valuable consideration and in satisfaction or part satisfaction of bona fide debts due to them respectively from said John Peter, and for the satisfaction whereof, among others, the said trust was raised and created as aforesaid, the whole of the said moneys so received by the defendant, and so being in his hands as aforesaid, in the manner and in the proportions following, to wit: to your orator, Washington Bowie, 2250 dollars of the same; to your orator, George Peter, 1850 dollars of the same; to your orator, George C. Washington, 650 dollars of the same; and to your orators, David and William K. Corry, 500 dollars of the same; and your orators further show that they here applied themselves, in a friendly manner, to the said defendant, requesting him to pay over the said moneys in the proportions and in the manner aforesaid: but the said defendant, nowise regarding the aforesaid reasonable requests of your orators, but combining and confederating himself with divers persons yet unknown to your orators, who, when discovered, &c., and pretending and giving out that he cannot safely pay away and dispose of the said moneys without the protection and sanction of a court of equity, &c., and setting up the said pretended and renounced and abandoned trust as a ground for apprehending danger in a compliance with the aforesaid reasonable requests of your orators, altogether refuses to pay the same as aforesaid, in breach and violation of the trusts, true intents, and purposes, for which he received the same. In tender consideration whereof, and for as much as your orators are remediless in the premises by the strict rules of the common law, and can have relief in this court as a court of equity only, to the end, therefore, that the said defendant may true and perfect answer make to all and singular the premises as fully and particularly as if the same were herein again repeated and interrogated, &c., that the said assignment or deed, purporting to be an assignment, be annulled and utterly cancelled; and that the said defendant be utterly discharged from the said trust or supposed trust, intended to have been raised and created by the said deed as aforesaid, if the said creditors had come in to avail themselves of the benefit of the same, upon the condition aforesaid; and that the said defendant be decreed to pay to your orators respectively the said sum of money in his hands as aforesaid; and

that your orators have such further and other relief, &c. &c. May it please the court to grant to your orators the United States' writ of subpœna to be directed to the defendant, commanding him, &c. &c.

W. JONES, *for Compt's.*

Answer of C. Smith.

The answer of Clement Smith to the bill of Washington Bowie, George Peter, George C. Washington, and David and William K. Corry, and John Peter, in the circuit court of the District of lumbia for the county of Washington, in chancery sitting.

This defendant, saving and reserving to himself all benefit of exception, &c., &c., for answer to the said bill, or to so much thereof as, &c., &c., answereth and saith, he admits that the said deed, purporting to be an assignment, as set forth in said bill, was executed by the complainant, John Peter, and that the trust thereby intended to be raised and created has been entirely vacated, renounced, and abandoned, as stated in said bill; and that this defendant has in his hands the sum of money stated in said bill, which would have been subject to the said trust if the same had been carried into effect upon the conditions stated in said deed. And this defendant is informed and believes that the complainant, John Peter, has disposed of all assets mentioned in said deed, and intended thereby to have been conveyed subject to the said trust, and, among the rest, has assigned over to the other complainants, in the proportions stated in said bill, all the said money in the hands of this defendant as aforesaid; but this defendant, how clear soever it may be in law and fact, that the said deed, and the trust thereby intended to have been raised, have become vacated, renounced, and abandoned, was advised by counsel learned in the law, that the safe and prudent course for him to pursue was to have the said trust fund, so far forth as the same had come to his hands, finally withdrawn, and applied under the sanction of a court of equity. This defendant, therefore, submits it entirely to the judgment and discretion of this court to pronounce upon the validity and effect of the said deed, and of the said intended trust; and what disposition is to be made of the said money in the hands of this defendant. And this defendant denies all fraud and combination, &c., without this, &c. Wherefore he prays to be here dismissed with his costs, &c.

Decree.

This cause being set for hearing, by consent of parties, upon the bill and answer, it is this 5th day of February, 1822, by the like consent, and upon the hearing of the said bill and answer, decreed and ordered that the said deed of assignment in trust, executed on or about the 24th day of April, 1820, and dated on that day, from the complainant, John Peter, to the defendant, be, and the same is hereby, wholly annulled and avoided, and that the same be cancelled. And it is further ordered and decreed that the defendant pay to the complainants the sum of money admitted to be in his hands, and to have been received under said deed, that is to say, to the complainant, Washington Bowie, 2,250 dollars; to the complainant, George Peter, 1,850 dollars; to the complainant, George C. Washington, 650 dollars; and to the complainants, David and William K. Corry, 500 dollars; retaining, out of the said moneys, his costs in this behalf expended.

By order: WM. BRENT, *Clk.*

J. P. No. 1. Deed from John Peter to C. Smith, trustee.

This indenture, made between John Peter, of the one part, and Clement Smith, of the other part, as well on the part and behalf of themselves, as of the creditors, securities, and endorsers of the said John Peter, who shall duly sign, seal, and execute a deed of release to the said John Peter, of all their claims respectively against him, either on open account, note, bond as security, or otherwise, witnesseth that the said John Peter, in order to discharge the said debts, and give the utmost satisfaction to his said creditors, securities, and endorsers, as in him lies, doth propose, and by these presents doth assign, transfer, and make over to the said Clement Smith, as trustee, all the goods and merchandise, claims on account, notes, bonds, or otherwise, in suit or not, in the schedule mentioned, and hereunto annexed, belonging to, due, and owing unto him, the said John Peter, by and from the respective and several persons in such schedule so named, and all and every other debt and debts, sum and sums of money, on the day of the date of these presents, any ways due or owing, or belonging unto him, either by and from the said several persons in the schedule respectively named, or by or from any other person or persons whomsoever. And whereas, for and in consideration of the premises, and the further sum of one dollar to him in hand paid, the said John Peter hath bargained, sold, assigned, transferred, and set over to the said Clement Smith, his executors, administrators, and assigns, all and every the property, claims on account, notes, bonds, or otherwise, in suit or not, in the said schedule mentioned, as also all and every other debt and debts, sum and sums of money, whatsoever due, owing, or belonging to the said John Peter at the time of the execution of these presents; to have and to hold, ask, demand, sue for, sell, recover, and receive, all the property, claims on account, notes, bonds, or otherwise, in suit or not, in the said schedule mentioned, as also all and every other debt and debts, sum and sums of money, whatsoever due, owing, or belonging to the said John Peter, at the time of the date of these presents, in trust, nevertheless, for the use and benefit of the creditors, securities, and endorsers of the said John Peter, who shall have signed, sealed, and executed said release, and, having sold, disposed of, and collected said property and debts, shall pay the same over, after deducting reasonable expenses, from time to time, to the said securities, creditors, and endorsers, in just, fair, and equal proportions; and the said John Peter doth hereby covenant to make any further assignment or grant that counsel learned in the law may advise in the premises.

In testimony whereof, the said John Peter doth hereto affix his hand and seal, this twenty-fourth day of April, 1820.

JNO. PETER, [SEAL.]

GEORGETOWN, DISTRICT OF COLUMBIA, 27*th April*, 1820.

On this day personally appeared John Peter before the subscriber, a justice of the peace for the county aforesaid, and acknowledged this assignment his act and deed, for the purposes therein mentioned.

DAN'L REINTZEL.

A schedule of certain property, claims on account, note, bond, or otherwise, in suit or not, conveyed by John Peter to Clement Smith, as trustee, for the benefit and use of the creditors, securities, and endorsers of the said John Peter, who have subscribed to the release of John Peter for any claims they may have in consequence of certain accounts and notes, as specified in said deed of release; the same, when collected and disposed of by the trustees, to be paid over to the said creditors, securities, and endorsers, in fair and just proportions.

Merchandise in the stone warehouse, not consumed by fire, viz.

7	hhds.	sugar, supposed value	-	-	-	$ 850
16	bbls.	do do	-	-	-	400
12	hhds.	molasses do	-	-	-	360
7	bbls.	do do	-	-	-	80
about 2,000	bus.	salt, at $60, is	-	-	-	1,200
22	bbls.	shad - -	-	-	-	60
						2,950

Notes, orders, accep. &c.

Order T. S. Bennett on John Strider	-	778	13		
Wm. Strider's note	-	363	33		
T. S. Bennett's "	-	1,670	80		
John Marshall & Co. "	-	552	37		
S. Hedges, 3d "	-	669	60		
Jacob Zuck "	-	603			
Ditto "	-	609			
Henry Strider's "	-	95	04	good	
Tho's Key's "	-	390			
Ditto "	-	393	50		
					6,124 77
Stephen W. Foreman "	-	219	49		
Geo. T. Brown, Bal. "	-	485			
Award agst. ex'r M. Stone "	-	178	20		
Ho. Moore note	-	95	64		
Henry Ashton "	-	100		good	
Thompson Simpson, Bal.	-	60			
Simm Bourne note	-	59			
Jas. Scott, Cum. "	-	200		good	
Ed. Ford "	-	213	08		
Dft. A. Boone & Co., on A. Beall	-	424			
S. E. Scott note	-	176	31	good	
					2,210 72
Jas. L. Cathcart note	-	210	04	good	
John Strother "	-	1,000		good	
F. Linthicum "	-	159	92		
R. R. Waters & Co. "	-	320			
Whetzel & Mills "	-	217	84		
Jo. Collins "	-	192			
Ditto "	-	110	66		

Mrs. Blake's order on Levy Court	100		good	
O. Williams & Co., note -	149	45		
Orders on Turnpike, B F. Mackall	656	56		
J. Sardo, bal. note -	100		good	
Sundry judg'ts by magis's -	50			
Jas. Black & Co., note -	132	60		
Ig. Mudd " -	144	75	good	
				3,543 82
Joseph Gales note -	380		good	
Notes, ac't, & Co , in suit, about	3,000			
Six shares of Co. stock -	400			
Brig Olympia, cost -	3,000			
Shipped on board Eagle, bal. -	1,000			
				7,780 00
				$22,609 31

Together with all the bacon now on hand, as well as all the book accounts and debts due the said John Peter.

JNO. PETER.

J. P. No. 2. Release to J. Peter.

Whereas, John Peter, of Georgetown, D. C., hath recently sustained very heavy losses by fire, and his creditors and friends are desirous to enable him to repair said loss; and whereas the said John Peter is willing and desirous to transfer and assign all his claims due on account, note, bond or otherwise, in suit or not, and his stock of merchandise not consumed by fire, to a trustee, for the benefit of his creditors and endorsers or securities, and has, by deed to Clement Smith, as per schedule thereto annexed, dated the twenty (24*th*) fourth day of the present month, (April,) assigned, made over and transferred to the said Clement Smith, in trust for the benefit of his said creditors, endorsers, and securities; and whereas the friends of the said John Peter are about to loan him, by note or otherways, a sum of money that he may again go into trade, but are unwilling to do so, so long as the new capital of the said John Peter will be liable for his former debts; and whereas, in consideration of the premises, the creditors, endorsers, and securities, of the said John Peter, are willing to release him from all his debts and liabilities, so that he may hold his future property and stock in trade exempt from their respective claims.

And whereas George Peter is now endorser in the Bank of Columbia on a note for nine thousand five hundred dollars current money, and also on a note in the Office of Discount and Deposite, Washington, for the sum of five thousand dollars current money. William Whann and Benjamin F. Mackall, his endorsers in the Farmers and Mechanics' Bank, Georgetown, on two notes, one for ten thousand dollars current money, and one other for five thousand dollars current money; Benjamin F. Mackall his endorser on a note in the Bank of Columbia for nine hundred and fifty dollars current money; William Whann his endorser on a note for three thousand dollars current money, now lying over unpa.d; also, as drawer of a note for said John Peter's accommo-

dation in the Office of Discount and Deposite, Washington, for two thousand three hundred and fifty dollars current money; Benjamin F. Mackall, endorser in the Farmers and Mechanics' Bank, Georgetwn, on two notes, one for four thousand dollars current money, the other for fifteen hundred dollars current money; Benjamin F. Mackall, endorser in the Office of Discount and Deposite, Washington, on two notes, one for three thousand dollars current money, and one for fifteen hundred dollars currrent money; Benjamin F. Mackall endorser on two notes to W. Smith, principal agent for the Im. & Ex. I. Company, Georgetown, for about three thousand three hundred and fifty dollars current money; Leonard H. Johns endorser on a note in the Office of Discount and Deposite, Washington, for the sum of four thousand six hundred dollars current money; Washington Bowie drawer of a note for said John Peter's accommodation in the Office of Discount and Deposite, Washington, for the sum of four thousand five hundred dollars current money; Thomas B. Beall for a sum on sundry notes due and owing him, about five thousand five hundred dollars current money; Robert Kirby and Wm. Clagett, of the firm of R. Kirby & Co. for two notes given to them for seven hundred nine dollars and seventy cents, each, current money; Francis Dodge, a note given him for about seven hundred dollars current money; John Taylor, a note given him for about four hundred and eighty dollars current money; David and William K. Correys, of the city of Philadelphia, for two drafts, one for three thousand dollars current money, and the other for two thousand dollars current money; the firm of Stephens and Lippincott, of the city of New York, due them on account, suppose about six thousand five hundred dollars current money; Jacob Hoffman, of Alexandria, a sum due him on account, suppose about four hundred and sixty dollars current money, and the President, Directors, and Company of the Bank of Columbia, a claim for about two thousand dollars current money.

Now, this indenture made this twenty-seventh day of April, A. D. 1820, between the said creditors, endorsers, and securities, severally, of the said John Peter of the one part, the said John Peter of the second part, and Clem. Smith, of Georgetown, D. C., of the third part, witnesseth, that for and in consideration of the premises, and the sum of one dollar current money to them in hand paid, they, the said creditors, endorsers, and securities, in the premises named, for themselves, their heirs, executors, and administrators, severally, have, and do by these presents release and acquit to the said John Peter, his heirs, executors, and administrators, all their aforesaid several claims on him for the several notes and account as herein mentioned, and that they may hereafter have, in consequence of the payment of the said moneys respectively by them to the aforesaid banks, and further covenant and agree, as the several notes shall become due, to release and discharge the said John Peter, and exonerate him entirely from any and all liability for the same respectively, according to the full and true intent and meaning of this instrument of writing; and the said creditors, endorsers, and securities, do hereby empower and authorize

Clement Smith, trustee, to appoint as assistant the said John Peter, and they, the said Clem. Smith and John Peter, will hold, sell, dispose of, collect, and sue for, the property, claims due on account, notes, bonds or otherwise, in suit or not, as assigned and made over to the said Clem. Smith by the said John Peter, by instrument bearing date 24th April, 1820, as trustee for the use and benefit of the said creditors, endorsers, and securities, their heirs, executors, administrators or assigns, and pay over and account for the same, with the said creditors, securities, and endorsers, in just, fair, and equal proportions; and the said John Peter covenants to make any further assignment or grant that council learned in the law may advise in the premises.

In testimony whereof, the parties have interchangeably set their hands and seals on the day and year as written.

Witness:

SALLY MORFETT,
GEO. PETER, [SEAL.]
WILL. WHANN, [SEAL.]
JNO. LITLE,
BENJ. F. MACKALL, [SEAL.]
GEO. R. GAITHER,
LEO. H. JOHNS, [SEAL.]
Witness, A. SUTER,
D. & W. K. CORRY, by C. SMITH, their Atty. [SEAL.]
Witness, A. SUTER,
JACOB HOFFMAN, by his Atty. C. SMITH, [SEAL.]
Witness, THOMAS NEVIT,
RT. KIRBY & CO., [SEAL.]
JOHN TAYLOE, [SEAL.]
WASHINGTON BOWIE, [SEAL.]
THOS. B. BEALL, [SEAL.]

In pursuance of the agreement (page 35,) the depositions are filed.

Defendants' interrogatory to J. Peter.

John Peter's deposition.

1st. State the time when your stock of goods and merchandise were destroyed by fire in Georgetown.

2d. After that fire, was any proposition for your relief made by your friends? If so, state it, and what was done under it.

3d. Was the scheme for raising a new capital for you upon the condition that all your old creditors should release their claims; was or not any other part of the plan for your relief conditional?

4th. Look at the paper marked J. P. No. 2.; was it executed and delivered by T. B. Beall, and the other signers thereto, upon any condition, either written or oral, that it was to be void if all your creditors did not sign it? State fully any conversations you have had with T. B. Beall on the subject of said release.

5th. Did you not consider the execution and delivery final and consummate as to all those who did sign; and did it not always remain in your possession?

6th. Were you not on terms of great intimacy and friendship with T. B. Beall from 1808 till the time of his death; and did he not board with you many years previous, and up to the time of his death? Has he often spoken to you, and what did he say about enforcing the payment of the mortgage debt referred to in the proceedings in this cause by proceeding against the mortgaged property? Was not your situation, between 1808 and 1820, such as would have enabled you to have paid the debt if T. B. Beall had required it?

7th. Did T. B. Beall, after the 27th April, 1820, ever speak of the said mortgage debt as a subsisting debt, or make any claim against you for it?

8th. Look at the paper marked J. P. No. 1, deed of trust to C. Smith; was it executed and delivered by you to C. Smith as a final and consummate deed; and did C. Smith act under it?

9th. Look at the papers, J. P. No. 3, purporting to be copies of proceedings in a suit in chancery. Did you ever see the original papers in that suit, or were their contents ever communicated to you till lately, and long since the passing the decree in that cause?

10th. Did you ever authorize the statements therein made relating to the release J. P. No. 2 being conditional?

11th. Did not T. B. Beall, before his death, know that some of your creditors had not released; and had you not conversations with him after such knowledge on his part, in which he spoke of his mortgage claim against you as discharged?

12th. Did you ever communicate to Geo. Peter your intention to apply to court for authority to pay him some money in the hands of C. Smith; and did you ever authorize or know that W. Jones, esq. intended to assume, as a part of the proceedings, the ground that the release was to be void if all the creditors did not sign it?

Interrogatory on part of the complainants, who, however, reserved all objections to the competency of the witness, and the admissibility of his evidence.

1. What was the consideration which moved the creditors to release their claims against you? Was it not the conveyance and assignment of the remains of your property to C. Smith, in trust, for their benefit?

2. If then you considered the release as final and conclusive on the signature by any one creditor, why did you deem yourself at liberty to divest those trust funds to the benefit of a few creditors, from the purposes of the trusts, as appears by the deed?

3. Did you not visit and consult with Mr. Jones respecting the proceeding in chancery mentioned in defendants' interrogatories, and employ and instruct in said suit, and state the circumstances of the case to him?

13th. Of the list of debts in paper J P No. 1, amounting to about $12,000, how much was collected, and how and when was it disposed of?

14th. Of the residue, amounting to $7,780, how much was collected, and how disposed of?

On part of complainant.

4. Did you not collect and dispose of the said moneys as your own private estate, considering the same to be unaffectual by the said trust deed at the time the same was disposed of?

5. If you a plied anv part thereof to the payment of debts released by your creditors, was such payment made voluntarily, or did you act as agent or trustee under the deed, and make such payment in pursuance, and in fulfilment of the trust deed?

Complainant's interrogatory.

When this suit was instituted, or about to be instituted, by the executors of T. B. Beall, was not the release J. P. No. 2 then in your possession, and been so from the time of its execution; and did you not exhibit it to the counsel of defendants, as evidence of the release of T. B. Beall's mortgage debt?

To the 1st interrogatory. My stock of goods and merchandise was consumed by fire on the 1st day of April. 1820, at night.

2d. A number of my friends agreed to make up a new capital, by a loan of their money and notes to the amount of $15,000. The wreck of my property of every kind was to be given in trust to Clement Smith, to be apportioned amongst my several creditors.

3d. I understood it as a condition pursuant to that plan, and the only condition in the deed for my relief, to my knowledge, on the part of those who agreed to advance me a new capital, that all my creditors should sign a release whereby the new capital would be exempt from arrest for my old debts.

4th. The paper marked J. P. No. 2 was executed and delivered by Thomas B. Beall and the other signers. I do not recollect that any stipulation was made at the time by the signers, and understood that the release in reference to their respective claims was to be final according to the terms and conditions of, as specified in the release. I had repeated conversations with Thos. B. Beall after the fire, some of them shortly before his death, as to his loss and mine, which he greatly regretted, but said he was content to submit to the loss, and cheerfully relinquish his claims against me.

5th. The instrument of release was some time in my possession; how long I do not know: my impression is, I delivered it to Mr. Smith, who, I understood, gave it into the hands of Walter Jones. I have no recollection of seeing it again until yesterday.

6th. My intercourse with Thomas B. Beall was of the most confidential and friendly character for a great many years prior to, and up to the time of his death. He was a boarder with me some

years before his death, and particularly intimate with myself and family. He never did intimate any intention of proceeding against the mortgage property, and, from his remarks as stated in the 4th interrogatory, could not apprehend any such intention. My pecuniary circumstances was frequently such, between the years 1808 and 1820, that I could have paid, and should have paid off the mortgage if said Beall had so desired. Nor have I any recollection that he ever required more than the interest.

7th. To the best of my recollection, he never did.

8th. The paper marked J. P No. 1, deed of trust to Clement Smith, was executed and delivered by me to said Smith, and I have reason to believe said Smith did act under said trust.

9th. To my knowledge, I never did see the papers marked J. P. No. 3, as to ming proceedings in a suit in chancery, until yesterday.

10th. Mr. Jones was authorized to obtain an order of court authorizing Clement Smith to pay certain individuals several sums of money in his hands under the trust; being in the deed of trust a co-agent, thought any proceedings unnecessary, and that it was competent for me to have assumed the responsibility, and paid the money. Mr. Smith thought differently, when Mr. Jones's agency was required, but, as to the matter and manner, I was, as may be supposed, altogether ignorant until yesterday.

11th. T. B. Beall did know before his death that all the creditors had not signed the release, and, subsequently to that knowledge, had repeated conversations with said Beall on the subject of his mortgage claim, and, as I have before answered, understood him to say that he had released his *original* claim on said property.

JNO. PETER.

Sworn to before me *me*, this 11th March, 1829.

LEWIS CARBERY, *J. P.*

12th. I am confident Geo. Peter was ignorant of my intention to distribute between him and other creditors moneys in the hand of C. Smith, until after the decree of the court; neither did I authorize, or *or* know that Mr. Jones pretended, or did assume as a part of the proceedings, the ground that the release was void, because all the creditors had not signed it. As I before stated, I was wholly ignorant of the bearing and phraseology of the proceedings until yesterday.

JNO. PETER.

Sworn to before me this 11th day of March, 1829.

LEWIS CARBERY, *J. P.*

13. Of the $12,000 of debts, as stated to be returned and collected, $2,126 14, the rest proved to be insolvent. The amount of the whole debts and effects collected by me, and enumerated in paper J P., No. 1, did not exceed $5,506 14, of which I paid Wm. Whann $1,000, L. H. Johns $2,250, Kirby & Co. $709, Dodge $380, Cruttenden $90, and a revenue bond, in which John Tayloe was security, for $1,218, making $5,649, besides other

payments which I do not now recollect; but say unequivocally that I paid more money than I received or collected under the deed of trust.

14. Interrogatory answered in the above.

4th. The moneys I collected was collected for my creditors, and paid to them as stated in the 13th interrogatory.

5th I have stated in the 13th interrogatory a full answer, and, after the failure of the arrangements to enable me to re-commence business, did, as in the case of the moneys in the hand of Mr. Smith, make such payments to the respective creditors, as I thought right and proper.

I held the release paper J. P. No. 2, for a long time, and believe I held the paper in my possession until the chancery suit brought by Mr. Jones, as referred to in my previous answer; and that said release I did exhibit to the counsel of Elizabeth Peter as evidence of the release of T. B. Beall's mortgage debt.

JNO. PETER.

Sworn to before me, this 11th day of March, 1829

LEWIS CARBERY, *J. P.*

To interrogatory 1st.—The movement in my favor, and for my relief, was begun and prosecuted by Judge Morsell, and other friends: therefore, do not know their motives. They were not stated to me at the time: there was a conveyance and assignment of the remains of my property to C. Smith, in trust for the benefit of my creditors.

2d. With those who signed the release, I understood the material object, as contemplated by my friends, was to enable me to resume business on a new capital, which was to be exempt from liability for old debts, and with reference to them at the time of subscribing, as I before observed, the only condition. At the time of making the distribution of moneys in the hands of Mr. Smith, as agent, I knew that a failure had occurred as to my re-engaging in business, and thought, as a co-agent in the deed, could, on my responsibility, make any disposition I pleased of the said money; but Mr. Smith differing in opinion, Mr. Jones was employed to obtain an order of court.

3d. I had interviews with , and corresponded with Mr. Jones on the subject, and made known my wishes, but of course gave no instructions; and, as I have before answered, knew nothing of the nature and phraseology of the proceedings until yesterday.

JNO. PETER.

Sworn to before me, this 11th day of March, 1829.

LEWIS CARBERY, *J. P.*

George Peter's assignment to Margaret Dick.

MONTGOMERY COUNTY, *March* 26, 1829.

I have this day sold to Margaret Dick, her heirs and assigns, for the sum of one hundred dollars, the receipt of which is hereby acknowledged, all my title and interest, as one of the devisees of

my mother, the late Elizabeth Peter, in and to the lots and buildings in Gay street, Georgetown, now occupied by Mrs. Dick, and particularly described in John Peter's, and to the late Elizabeth Peter, as by reference thereto will more fully appear. And I engage to execute any further conveyance which counsel may think requisite, more effectually to consummate said sale.

Witness my hand and seal, the day and year above written.

GEO. PETER, [SEAL.]

Signed, sealed, and delivered, in presence of
ROBERT P. DUNLOP.

Interrogatories on the part of Defendants to Geo. Peter.

Geo. Peter's deposition, 9

1. Are you or not acquainted with the parties to the above suit?
2. Have you or not any interest in the event of said suit?

3 Do you remember the destruction of John Peter's merchandise by fire? After that fire, did not certain of his friends propose to loan him a new capital to recommence business, upon condition that his creditors would release him from his old debts; and were you not one of the friends agreeing to advance a new capital? Was any part of the scheme for John Peter's relief conditional, except that part relating to the advance of a new capital to enable him to recommence business again?

4th. Look at the paper marked J. P., No. 2; was it executed and delivered to John Peter by T. B. Beall, yourself, and the other signers thereto, upon any condition, either written or oral, that it was to be void if all John Peter's creditors did not sign it? State fully any conversations you had with T. B. Beall on the subject of said release, either at the time he signed it, or at any time before or afterwards.

5th. Did Thomas B. Beall ever intimate to your mother, or yourself, or any of the family, that he held any mortgage or lien on the property bought by her from John Peter? When you spoke to him at the time he signed the release, and inquired how his debt arose, did he then intimate to you that he held any such mortgage?

6th. Look at the papers marked J. P, No. 3, purporting to be copies of proceedings in a chancery suit. Did you ever see the original papers in that suit, or were their contents ever communicated to you, or did you know you were made a party to that suit, till long since the passing the decree in that cause? Did you ever authorize the statements therein made relating to the release J. P., No. 2, being conditional?

7th. Did you not first hear of T. B. Beall's mortgage after his death? Did you not then call on John Peter; and did he not produce and exhibit to your mother's counsel the release J. P., No. 2, as evidence that the debt was discharged?

8th. Did you not yourself act upon the impression that the release J. P., No. 2, discharged the claims of all the creditors who signed it? and did not John Peter re-convey, by a new deed, his house in Cherry street, which the releasing creditors, and parti-

cularly T. B. Beall, understood was to remain bound for the debt due to the Bank of Columbia?

9th. Look at the paper marked A. B.; when you endorsed that order. had you ever seen, or did you know, or had you been informed of the contents of the decree referred to therein, or any of the papers upon which said decree was founded?

10th. Have you any recollection of receiving any money from C. Smith under said order A. B.?

To the 1st interrogatory: I am acquainted with the parties to said suit.

To the 2d interrogatory: I had an interest in the event of said suit at one time; but I have now no interest therein, having disposed of all my interest in the same.

To the 3d interrogatory: I have a distinct recollection of the destruction of John Peter's merchandise by fire. After the fire, a number of the friends of the said John Peter agreed to loan him money, as a capital, to commence business again as a merchant, upon condition that the creditors of the said John Peter would release him from the payment of the debts due by him to them. This deponent was one of the friends of the said John Peter who agreed to loan to him money for the aforesaid purpose. There was no condition attached to the plan for the relief of the said John Peter other than that which relates to the loan of money to him as a new capital to begin business again, and which condition has been stated in the foregoing part of this answer.

To the 4th interrogatory: The paper marked J. P. was executed and delivered to John Peter by this deponent, and the other signers thereto, without any condition, either oral or written, that the said paper was to be void in case all the creditors of the said John Peter did not sign the said paper. This deponent has a distinct recollection of a conversation which he had with the late Thomas B. Beall after the said paper was executed. It took place in the presence of the late William Wmann in reference to the loan of money which some of the friends of the said John Peter proposed to make to him for the purpose of commencing business again. This deponent applied to the said Thomas B. Beall to contribute something towards the loan of the proposed new capital; the said Thomas B. Beall, at that time, declined loaning any money to the said John Peter for the said purpose, stating that he had relinquished an old claim which he had against the said John Peter. and that he relinquished the same cheerfully.

To the 5th interrogatory: Thomas B. Beall, in his life time, never mentioned to this deponent that he had any mortgage on him upon the property purchased by deponent's mother, the late Elizabeth Peter, of the said John Peter. Deponent's first information of the existence of such a mortgage was after the death of the said Thomas B. Beall. At the time deponent had the conversation with the said Thomas B. Beall, mentioned in deponent's answer to the 4th interrogatory, the said Thomas B Beall spoke of his claim against the said John Peter as an old claim of long standing; but did not state how it arose, or whether the same was secured by mortgage or in any other way.

To the 6th interrogatory: I have looked at the papers marked J. P., purporting to be copies of proceedings in a chancery suit. I never saw the original papers in said suit, nor I did know of the existence of such a suit, or that I was a party thereto, until after the decree of the court was made in the said cause. I was never consulted about the bringing of said suit, nor did I authorize the statement therein contained relative to the paper marked J. P., No. 2, or any other statement in reference to that paper, or any other paper therein referred to, to be made; the existence of such a suit being utterly unknown to me.

To the 7th interrogatory: I have already said that my knowledge of the existence of T. B. Beall's mortgage arose after the death of the said Thomas B. Beall. Upon learning that such a mortgage existed, and upon application made to the said John Peter for information in relation to the same, deponent well recollects that the said John Peter exhibited to the counsel of the said Elizabeth Peter the release J. P., No 2, as evidence that the mortgage debt due from him to the said Thomas B. Beall was discharged.

To the 8th interrogatory: I always believed that the release J. P., No. 2, discharged the claims of all the creditors of the said John Peter who signed the same, and acted under that impression. The said John Peter, by a new deed, re-conveyed his house on Cherry street for the purpose of securing the payment of a debt due from him to the Bank of Columbia. I have no recollection of the said Thomas B. Beall, and the other releasing creditors, being privy to, or knowing of the execution of the said deed at the time the same was executed.

To the 9th interrogatory: I have looked at the paper marked A. B. I recollect, in passing John Peter's office in Georgetown, during the time he was Mayor of that place, he requested me to come into his office, and there showed me, for the first time, the paper marked A. B ; requested me to endorse the same, and explained that it was necessary to be done, to enable him to get my dividend out of the assets conveyed in the trust deed; and that the said dividend would be applied by him in part payment of the debt due from him to the Bank of Columbia, which was endorsed by me. At John Peter's request, I endorsed the paper A. B.; which, after signing, I returned to him. Until that time, I had never been informed of the said decree referred to therein, or of the papers upon which said decree was made.

10th interrogatory: I never did receive from C. Smith any money under said order A. B. GEO. PETER.

STATE OF MARYLAND, *Montgomery County, sct.:*

On this twenty-seventh day of March, in the year eighteen hundred and twenty-nine, personally appears George Peter, before the subscriber, a justice of the peace for the county and State aforesaid, and made oath that the foregoing answers to interrogatories, from No. 1 to No. 10 inclusive, and signed by him, the said George Peter, are true, to the best of deponent's knowledge and belief. JOHN A. HOWARD.

Answer by Francis Dodge to Complainants.

Deposition of Francis Dodge.

1st. *Question:* I know S. B. Balch and John Peter, and I am not interested.

2d. Yes.

3d. I understood the friends of Mr. Peter had agreed to loan him $15,000 to recommence business with, but on condition that he should be released by all his old creditors; and this Mr. Peter told me, as well as common report.

5th. I was a creditor of Mr. Peter, who called on me with a paper which I understood to be a release from his creditors, which I think several had signed, and which he was anxious I should sign; and he stated, as well as I can recollect, that if any one of his creditors objected to sign, the whole arrangements, both as between creditors and loaners, would fail. I did not sign, because a part of the debt belonged to others, but offered to do it for my interest at any time, and I got the consent of one of the others to do so, but I have no recollection that I was ever called on afterwards, and I understood, by common report, that it had all failed.

6th. I think is answered already.

7th. I understood from Mr. Peter that, unless all the creditors signed the release, the whole plan or plans would be void, as I have already answered to 5th question.

8th As I have already said two or three times, I understood from Mr. Peter that all the creditors must sign, or all would go for nothing.

Before, I answered the 3, 5, 6 and 7 questions of complainants, The 2d interrogatory of defendants was put to me, to which I answer, that there was a paper in Mr Peter's hands which I understood to be the release, and I believe had been signed by several, and which he was anxious I should sign.

FRA. DODGE.

9th interrogatory on the part of the Complainants.

Do you know the handwriting of John Peter?—look at the letters marked A. B. No. 1, and A. B. No. 2, purporting to be written by John Peter to William Fowle & Co. at Alexandria; are they in the handwriting of John Peter, the defendant, or not?

I believe the papers are in the handwriting of John Peter.

Question by Defendant.

Look at the paper marked J. P. No. 2; is it the written release produced to you for your acceptance and signature at the period referred to by you?

I can't say whether it was this paper or not.

Are you acquainted with the handwriting of Thomas B. Beall? and is the signature to said release J. P. No. 2, the handwriting of said Beall?

I am not *well* acquainted with T. B. Beall's handwriting, but should think the signature referred to was his.

FRA. DODGE.

DISTRICT OF COLUMBIA, *Washington County, viz.:*

On this 30th day of June, in the year 1829, personally appears Francis Dodge, before the subscriber, a justice of the peace, and made oath on*ly* the Holy Evangl. of Almighty God, that the aforegoing answers to the interrogatories proposed to him on the part of the complainant and defendants, and constituting his deposition, are true as written. JAMES YOUNG,
Justice of the Peace.

Messrs. WILLM. FOWLE & Co.

A. B. No. 1. J. Peter to W. Fowle & Co. 25th April, 1820.

Gentlemen: I find you hold a note of mine, given Ricd. Parrott for $1300; you are aware of my recent great loss, and I beg leave to state the proceedings of my friends in consequence thereof. They have come foward, and agreed to loan me a cash capital of $15,000, but on the special condition that I obtain a release from all my creditors, and keep my old and new business entirely separate. I am prepared to transfer to Mr. Clem. Smith, as trustee, all my book accounts, notes, and effects, and, as collected, to be paid equally to all my creditors. It is fully equivalent to pay every cent, but you know the difficulty of collections. My endorsers here have come forward with a magnanimity unusual, and refused to be secured in preference to other creditors. I have obtained from all my foreign creditors, and endorsers at home, a promise to release, and shall wait for your answer, which I can't anticipate will be other than a agreement, because the same will be to your interest. I did not know until Saturday, who held the note given to Mr. Parrott. He can't pay. However, you could have the same, if you wish, protested to bind him. If you agree to this proposition, I wish you, by return mail, to write Mr. Clem. Smith, and authorize him to make the release, and I shall be then enabled to commence business at once. Yours is the only agreement now wanting, and I hope will be received by next mail. As a merchant, it is not material to dilate further on this subject: the calamity and custom will offer themselves to you as my apology. Mr. Keene will hand this, and I hope you can come up to morrow, or write Mr. Smith, who has agreed to be the trustee.

In haste, I am, with great respect,
GEORGETOWN, *25th April*, 1820. JNO. PETER.

GEORGETOWN, *28th April*, 1820.

Messrs. WM. FOWLE & Co.

A. B. No. 2. J. Peter to W. Fowle & Co. 28th April, 1820.

Gentlemen: Your inability to make the release asked, of the note of mine in your possession, is greatly to be regretted; more particularly as it will be against the interest of the owners thereof. I had made an arrangement which would have much benefitted my creditors, circumstanced as you are, and would have allowed my going into business again with a cash capital of $15,000, but my friends loaning me the money, made a condition that I should, in

the first case, obtain a release, which all my endorsers and creditors have done, except the debt to you. This agreement was made at a moment of friendly feeling, the warmth of which, as you know, subsides with time.

I have shown your letter this morning to several, many of whom refuse to give the aid as promised, if your claim stands in the way, and indeed some of my endorsers, I apprehend, would now stickle for a preference. I therefore beg leave to state, that, if you can't exercise the discretion to sign the release, you will undo what has been done, and jeopardize the interest of the owners of the note, who would in that case come in for an equal proportion of all my effects as assigned to Clem. Smith for that purpose. Your refusal will frustrate my advantage, and produce a different state of things.

I will esteem it a favor if you will reply by post, whether you are at liberty to act so as to promote the interest of the holders of the note. Every day's delay may diminish the zeal of my friends; therefore let me hear from you by return mail, with an authority, I hope, to Clem. Smith to release, as it respects me.

With respect, your obedient servant,

JNO. PETER.

CIRCUIT COURT, DISTRICT OF COLUMBIA, *Washington County.*

JOHN ROSE and STEPHEN B. BALCH, executors of THOMAS B. BEALL, *vs.* JOHN PETER and others, the devisees of ELIZABETH PETER, deceased. } *In Chancery.*

General interrogatories on the part of the Complainants.

C. Smith's 1st deposition.

1 interrogatory. Are you acquainted with the parties named in the above caption? Are you in any manner interested in the event of the controversy between them?

2. Do you recollect a fire which, some time in the spring of the year 1820, consumed a warehouse and stock of goods occupied and possessed by John Peter, in Georgetown?

3. Did or did not the friends of John Peter, immediately after the said fire, propose to lend him a new capital to commence business with? Have you heard the said John Peter speak of such proposition of his friends, and state the conditions on which they were willing to make such loan? If yea, state what you have heard the said John Peter say on that subject.

5. Was it not proposed at the same time that the creditors of the said John Peter should release him from their respective demands? If yea, state whether you were or not a creditor of the said John Peter; and whether application was or not made to you for a release of your debt, by whom such application was made, and, if by said John Peter, state what he said on the occasion?

6. Did or did not the scheme, *to* set on foot for the release and assistance of the said John Peter, fail? State if you know the reason which occasioned it to fail. If you have ever heard the said John Peter speak on the subject, state what he said.

7. Was it not a part of the said scheme that it should be inoperative and void in respect to all the parties, including the said John Peter, his friends, and releasing creditors, in case any of his creditors should refuse to release said John Peter from his debts?

8. Did or nor John Peter say to you at the time he applied for your release, that, if you or any other creditor refuse to sign his release, the release of those who had signed would be inoperative?

Additional interrogatories to Clement Smith on the part of the Complainants.

1 interrogatory. Look upon the instrument of writing marked J. P. No 1, which purports to be a deed of conveyance, in trust, from the said John Peter to yourself, dated the day of , in the year 1820. Was the said instrument of writing ever delivered to you by the said John Peter, or by any person having authority from him to deliver the same, as a formal and final act by which the same was to be perfected as a part of the scheme of his friends and creditors for his relief and assistance after the fire, which consumed his store and goods in the year 1820?

2. Did or did not the said John Peter ever deliver to you any part of the property mentioned in the said deed, either stock, books, notes, bonds, or other security, for the payment of money?

3. Was or was not the final and formal delivery of the said deed postponed until it should be ascertained whether or not the creditors of the said John Peter would all release him; and when it was known that he could not obtain the release of all his creditors, was not the whole scheme considered, by the said John Peter, his friends and creditors, who had released, as void and abandoned, according to the terms and conditions of their original agreement?

4. Did you ever assume upon yourself the trust proposed to be created by the said instrument of writing? If so, did you or not appoint the said John Peter your agent to sell, collect, and dispose of the property mentioned in the said deed, or any part thereof?

5. State the plan proposed by the friends, and certain of his creditors, for the relief of the said John Peter, on the occasion of his loss by the said fire. Did not the whole plan, scheme, or proposition rest upon the condition that all the creditors of the said Peter should release him from their respective debts; and, if any one creditor should refuse, was or was not the whole plan, scheme, or proposition, in every part, to be inoperative and void in respect to all the parties, including the said John Peter, his friends, and such creditors as might execute releases of their respective debts?

6. Have you or not heard the said John Peter say that certain of his creditors had refused to release him from their claims? Name them if within your recollection. Did he, or not, assign such refusal as a reason why the said plan, scheme, or proposition, for his relief had failed; and did he not actually abandon the said scheme, and retain to his own use and disposal all the property mentioned in the said deed?

7. Did the said John Peter dispose of any of the said property under your direction or by your order?

8. Did you ever assume upon yourself the trust mentioned in the said deed, or do any act in performance of such trust?

9. If any part of the funds of John Peter came to your possession, how were the same disposed of? Did you pay any part thereof to George Peter? If so, produce the authority for such payment, and the receipt of said George Peter.

Further interrogatories by Complainant.

10. After signing the release J P. No. 2, was the same left in the possession of John Peter? if yea, for what purpose was it so left with him?

Interrogatory on the part of Defendant to the Complainants' witnesses, reserving all objections to their competency, and the admissibility of their evidence.

1st. If there was any proposition of the nature suggested in complainant's 3d general interrogatory, was not the same reduced to writing? If yea, defendants object to any parol evidence thereof, without producing the same, or giving notice to produce it to the proper party, and refusal.

2d. If there was any proposition of the nature suggested in complainant's 5th general interrogatory, was the proposed release reduced to writing, and offered to you in writing for your acceptance and signature? If yea, defendant's object, as above, to parol evidence of its contents, or John Peter's declarations of its contents, terms, or conditions.

Defendants object to complainant's 6th and 7th and 8th interrogatories, so far as they are intended to show, by parol, any other conditions, or reasons of failure of the release, than those stated in the written release.

Defendants object to the admissibility and competency of Mr. Smith to prove the non-delivery of the deed, stock, books, and goods, notes and bonds, and security for money referred to in complainant's additional interrogatories, 1, 2, 3, 4, to C. Smith, and that no trust was conferred on him, and to any parol proof of the terms of the release referred to in 3d interogatory.

Same objection to the 5th interrogatory, and to the 6th, 7th, and 8th.

Interrogatories to C. Smith, on the part of Defendants, reserving all objections to the competency of the witness, and the admissibility of his evidence.

1. Is, or not, the deed marked J. P. No. 1, in the handwriting, and executed by John Peter? Was it, or not, ever in your possession?

3d Did you, or not, receive any, and how much, money from the debtors of John Peter, pursuant to said deed? From whom was it received; and was it, or not, deposited to your credit, as trustee, in the Farmers and Mechanics' Bank of Georgetown? If yea, refer to the books of said bank, and state the terms and form of the entries?

4th. Did you, or not, under said deed, or in any other way, and how, receive the returns or proceeds of a West India shipment of the said John Peter? Did you or not receive, under said deed, and, or in any other way, from George P. Forrest, any money or effects of the said John Peter?

5th. Look at the deed marked J. P. No. 2, purporting to be signed and executed by Thomas B. Beall. Are you acquainted with his handwriting, and is that his signature? Is the signature thereto, purporting to be yours, your signature, and did you execute and deliver the same to John Peter?

6th interrogatory by Defendants to C. Smith.

What was the amount of the proceeds of the bill of lading, marked C. S. No. 1? at what time was the same paid into the Farmers and Mechanics' Bank of Georgetown to the credit of William Whann or to you; what notes, bills, or debts were said proceeds applied to pay? State the dates, amounts, and several drawers and endorsers of said notes, bills, or debts, when they became payable, and were paid, and to whom they belonged when paid.

7th. Was any part of the said proceeds of the said bill of lading, C. S. No. 1, paid or applied in any other way than is stated in your answer to 6th interrogatory above? If so, state fully your knowledge on the subject.

8th. How long after the fire which consumed J. Peter's goods, was the bill of lading, C. S. No. 1, assigned to William Whann? was not T. B. Beall then President of the said Farmers and Mechanics' Bank, and did he not know of said assignment when, or soon after, it was made?

9th. Was or not the assignment, or order on said bill of lading, C. S. No. 1, by William Whann to you, made to you to secure debts of J. Peter, or Whann, due to said Farmers and Mechanics' Bank?

10th. What was the amount of the proceeds of the bill of lading marked C. S. No. 2? at what time was the same paid into the said Farmers and Mechanics' Bank, or to said Beall, as the President thereof; what notes, bills, or debts were said proceeds applied to pay? State the dates, amounts, and several drawers, and endorsers of said notes, bills, or debts, when they became payable, and were paid, and to whom they belonged when paid.

11th. Was any part of the said proceeds of the said bill of lading C. S. No. 2, received, paid, or applied, in any other way than is stated in your answer to the 10th interrogatory? If so, state fully your knowledge on the subject.

12th. Was not T. B. Beall always on terms of great intimacy and friendship with *with* John Peter, and did he not board with him many years previous to, and up to the time of his death?

13th. Was T. B. Beall liable to you or said Farmers and Mechanics' Bank for any of the notes, bills, or debts, referred to in any of the aforegoing interrogatories, or any of your answers to the same; or did he engage or promise, either orally or in writing, to indemnify you or said bank for any of them? If so, state which, and how many of them.

14th. Was the note of $7,000, mentioned in your answer to the 11th interrogatory, ever paid off, and when, and out of what funds?

15th. Did you, as endorser of that note, consider T. B. Beall as engaged to guarantee you or the bank for its payment?

The answers of Clement Smith to the general interrogatories on the part of the Complainant.

To the 1st: He says he is acquainted with those named, and is not aware that he is in any manner interested in the event of the suit between them.

To the 2d: I do recollect the fire, but not the precise time. Here the witness was requested to answer the first interrogatory on the part of the defendants; and, to that interrogatory, he says, "He does not recollect; he cannot be positive either way."

To the 3d interrogatory on part of complainant, he says: Several of the friends of John Peter, after the burning of his store, did agree to lend him their notes or money, I think, to the amount of ten thousand dollars, on the condition that the whole of his creditors would release him from his debts.

To the 5th: Before answering this interrogatory, the witness was desired to answer the defendant's 2d interrogatory, and, to that interrogatory, he says: "The release proposed to be signed by John Peter's creditors was in writing." Witness then proceeds to answer complainant's 5th interrogatory: I was not a creditor, and the balance of this interrogatory is answered before.

To the 6th interrogatory, he says: "The condition on which the friends of John Peter agreed to furnish the new capital not being complied with, the scheme fell through. Mr. Peter called on me a day or two before his intended departure for New York, to obtain from me the notes and funds which his friends had lodged with me, to be delivered to him, when his creditors should have complied with the terms. Finding all the creditors had not signed the release, I declined to comply with his request, on which he complained much, and said that there could be no doubt all his creditors would comply. He left the room, and returned in a few moments with a letter in his hand, and said, "the business is all at an end;" Mr. Fowle, or some other person to whom he had written, having refused to sign or release his debt."

To the 7th: To this interrogatory: I answer, without hesitation, that such was my impression. I did then, and do now believe it was so understood by all the parties, and on that condition alone signed the release.

To the 8th: He did not apply to me as a creditor: I was attorney for others, who were his creditors. John Peter certainly must have understood it so far from his observations to me, as stated in the 6th interrogatory.

Clement Smith's answers to Complainant's special interrogatories.

To the 1st, he says: The instrument, marked J. P. No. 1, was handed to me by some person; who, or at what time, I do not recol-

lect. It was in my possession but a short time, and was given up, I presume, to Mr. Peter or Capt. Beall. I do not recollect having seen it, or any of the other papers, until within the last year. I did not consider the delivery of the paper to me a final act, or I would not have delivered it up to Mr. Peter or Mr. Beall, to which ever I might have given it.

To the 2d, he says: John Peter never did, to the best of my belief, deliver to me a single article of the property mentioned in the deed or schedule, or any other property. He placed in my hands sundry notes, which he received for the sales of goods which escaped the fire, which were paid, and the proceeds distributed under a decree of the court.

To the 3d: The first part of this interrogatory is fully answered in my answer in interrogatory No. 1. To the latter part I can only answer for myself, that I did consider the whole scheme as resting on the general release of his creditors.

To the 4th: I do not recollect that I ever did assume upon myself the trust, further than receiving the notes before spoken of. I certainly did never take possession of any part of the property, nor do I believe that I ever did appoint John Peter agent; that being unnecessary, as, by the terms of the deed, he was appointed to hold the property, and had co-equal powers given to him.

To the 5th: The first part of this interrogatory is answered before. To the second part: I repeat such was my impression, and it was so considered, I believe, by all the parties concerned.

To the 6th: The first part of this interrogatory has been answered.

Mr. Peter collected the debts, and disposed of the property without my interference or control. No part of his property, further than the notes before mentioned, ever came to my possession.

To the 7th and 8th interrogatories, for answer, he refers to his answers to the fourth and sixth interrogatories.

To the 9th, he says: By the decree of the court, George Peter received his proportion of the same, and you have herewith his receipt, marked A. B.

The examination of Clement Smith by Defendant's counsel.

To defendant's 3d interrogatory, he answers: He received nothing from the debtors of John Peter; he received only the notes before mentioned, amounting in all to the sum of $5,347 $\frac{53}{100}$, which was paid and entered to the credit of C. Smith, trustee, in the Farmers and Mechanics' Bank of Georgetown, as distinguished from his private account.

To the 4th, he answers: I did not receive, by virtue of the deed, any thing but the notes before mentioned. My answers to the 6th and other interrogatories, answer this.

10th, complainant's interrogatory: After signing the release, it was left with John Peter, who had possession of the paper from the beginning, for the purpose of procuring the signatures of his creditors.

To the 5th: I am acquainted with the handwriting of T. B. Beall, and believe the signature is his. The signature purporting to be my own is genuine. I signed and delivered the same to John Peter, but considered it conditional that all his creditors should sign it, or release him.

To the 6th interrogatory, he says: The only shipments made by John Peter, the bills of lading of which came to my possession, were two herewith communicated, and marked C. S. No. 1, and C. S. No. 2. The proceeds of the bill of lading No. 1, was assigned to William Whann, and deposited to the credit of Whann in the Farmers and Mechanics' Bank, and applied by him to the payment of a note or notes of John Peter, endorsed by said Whann. The proceeds of No. 2 was assigned to Thomas B. Beall, President of the Farmers and Mechanics' Bank, and, after paying expenses, was deposited in the said bank, and applied to the payment of the said Peter's notes then in bank. $2,222 $\frac{87}{100}$, the proceeds of bill of lading No. 1, was deposited to the credit of Whann, specially, on the 13th day of September, year 1820; and, on the same day, a note of John Peter, endorsed by B. F. Mackall and Wm. Whann, dated the 2d day of March, 1820, and due the 1st May, 1820, the property of the bank, was paid by William Whann, as deponent believes, from said proceeds, and some other funds that appear to the credit of said Whann.

To the 7th. The above answers this interrogatory.

To the 8th, he says: He does not now recollect, but supposes the assignment is dated; that he believes it was done a few days after the fire. Tho. B. Beall was, at the time, President of the said bank, and no doubt knew of the assignment to Wm. Whann, though he cannot say positively that he did.

To the 9th, he says: The assignment of the said bill of lading was made, doubtless, to Wm. Whann, to secure him in part of his endorsements, but he does not recollect that it was intended to secure any particular debt. The assignment to deponent, by Whann, was not, that he recollects, given to secure any endorsement at bank.

To the 10th and 11th, he says: He believes the amount collected was $6976 $\frac{67}{100}$; between July, 1820, and January, 1821, $2040 $\frac{12}{100}$ was applied to pay freights out and home. In July, 1820, $2949 $\frac{13}{100}$ was applied to the payment of a note of John Peter, of $7000 *dollars*, dated 3d March, 1820, favour of C. Smith, due 18-21 same month, and then the property of the Farmers and Mechanics' Bank; $1250 $\frac{40}{100}$ was applied to the payment of duties; and the sum of $354 78 to various charges; leaving a balance in bank, applicable to the payment of the debt of John Peter, of $381 $\frac{64}{100}$.

To the 12th, he says: Yes.

To the 13th. My recollection in regard to the matter of this interrogatory, is, that at the time the discount was made for the note of $7000 mentioned in the last interrogatory, John Peter was loading a vessel or vessels for New York, and the money was loaned to enable him to purchase flour to complete his cargo under an express verbal agreement, between said John Peter and the au-

thorized officers of the bank, that the cargo of the said vessels should be pledged as a security for the payment of the said loan, which was afterward accordingly done by the assignment of the bill of lading, No. 2. The destination of the vessel was afterwards changed for the West Indies. My present recollection of any engagement or guarantee by Capt. Beall, to save me, or the bank, from loss, in consequence of loans made John Peter on either of the above notes, is at this time too indistinct to allow me to testify respecting it.

To the 14th, he says: The note of $7000 was paid on the 13th day of July 1820, in full, but this deponent does not know out of what funds, except as before mentioned.

To the 15th, he says: He had no written guarantee from Capt. Beall, and has so faint a recollection on the subject that he cannot testify respecting it.

Since the answers to the preceding interrogatories were given, deponent has found a third bill of lading assigned to Whann, the proceeds of which deponent received, and paid to Whann. It is communicated, and marked C. S. No. 3.

C. SMITH.

DISTRICT OF COLUMBIA, *Washington County, viz.*

On the sixth day of July, in the year 1829, personally appears C. Smith, before the subscriber, a justice of the peace in and for the county aforesaid, and made oath on the Holy Evangelists of Almighty God, that the above and aforegoing answers to the interrogatories proposed to him on the part of complainant and defendants, are true, to the best of his knowledge, recollection, and belief.

Sworn to before

JOHN COX, *J. P.*

C. S. No. 1. Bill of lading

Shipped on board the schooner Elizabeth, Capt. John Tolly, for St. Lucia, and a market, and consigned to said Tolly.

625 bbls. flour.
14 half bbls. ditto.
51 kegs butter, 2633 nett.
16 boxes Castile soap, 672.

This vessel, I learn, sailed yesterday. My directions were, to bring specie, if to be obtained without much hazard; to find a good market; and, if the proceeds could not be invested in specie, to get the returns in the produce of the place, leaving a sound discretion on the part of Capt. Tolly, who is a smart, active man.

JNO. PETER.

GEORGETOWN, 4*th April*, 1820.

GEORGETOWN, 4*th April*, 1820.

For value received, I hereby transfer to William Whann the property as within mentioned.

JNO. PETER.

GEORGETOWN, *Washington County, to wit:*

On the 10th day of April, 1820, John Peter appeared before me, a justice of the peace, and made oath, that the original invoice, of which the substance of this is a copy, was destroyed by fire in the late conflagration of his warehouse.

Sworn before

BENJ. F. MACKALL.

Pay to C. Smith, esq. for my use.

WM. WHANN.

C. S. No. 2. Bill of lading

Shipped in good order, and well conditioned, by John Peter, in and upon the good brig, called the Olimpia; whereof is master for this present voyage, Alexander Rutherford, and now lying in the port of Georgetown, and bound for St. Jago de Cuba, to say:

Fourteen firkins and 2 kegs butter,
Five hundred bacon hams,
Fifty crocks lard, and
Nine hundred bbls flour,

Being marked and numbered as in the margin, and are to be delivered in the like good order, and well conditioned, at the aforesaid port of St. Jago de Cuba, (the danger of the seas only excepted,) unto Mr. John A. Smith, supercargo, or to his assigns, he or they paying freight for the said goods at the rate of one hundred and seventy-five cents per barrel, with primage and average accustom. In witness whereof, the master or purser of the said brig hath affirmed to three bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void. Dated, Georgetown, the twentieth day of March, 1820.

A. RUTHERFORD.

GEORGETOWN, *4th April*, 1820.

For value received, I hereby assign, transfer, and make over unto Thomas B. Beall, President of the Farmers and Mechanics' Bank of Georgetown, all my right, title, claim, and interest, of the above bill of lading, hereunto annexed.

JNO. PETER.

Witness, ALEXR. SUTER.

C. S. No. 3. Bill of lading.

Shipped in good order, and well conditioned, by John Peter, in and upon the good schooner called the Farmers' Friend; whereof is master for this present voyage, A. Semmes, and now lying in the port of Georgetown, and bound for the West Indies, to say:

Two hundred hams of bacon, and sixteen jars of lard, being marked and numbered as in the margin, and are to be delivered in the like good order, and well conditioned, at the aforesaid port of the West Indies, (the danger of the seas only excepted,) unto A. Semmes, or to his assigns, he or they paying freight for the said goods agreeable to charter, party with primage and average

accustomed. In witness whereof, the master or purser of the said schooner hath affirmed to two bills of lading, all of this tenor or date; one of which being accomplished, the others to stand void. Dated, Georgetown, 28th March, 1820.

A. SEMMES.

GEORGETOWN, *4th April*, 1820.

For value received, I transfer this bill of lading to William Whann, esq.

JNO. PETER.

Pay to C. Smith, esq., for my use.

WILLM. WHANN.

Thereupon, further proceedings of and upon the premises aforesaid, with the consent of the parties, and by order of court, is continued until the first Monday of December next.

At which said first Monday of December, in the year 1829, come again into court here as well the complainants as the defendants, by their solicitors aforesaid: thereupon, further process of and upon the premises aforesaid, with the consent of the parties, and by order of the court, is continued until the first Monday of May next.

At said first Monday of May, in the year one thousand eight hundred and thirty, come again into court the parties, by their solicitors aforesaid. Thereupon, the defendants, by their solicitor, file here the following deposition:

Further interrogatories to C. Smith, esq.

C. Smith's 2d deposition.

16th. Was the note of $7000, mentioned in your answer to the 11th interrogatory, endorsed by you at the instance and request of John Peter, or of T. B. Beall? Did not T. B. Beall ask you to endorse it, and are you not under the belief that T. B. Beall was to save you harmless? Did John Peter ever ask you to endorse it?

17th. Have you not lately been under the impression that T. B. Beall was to guarantee you or the bank the payment of said note of $7000? and did you not so inform J. Dunlop since you were applied to *to* give testimony in this case?

18th. Was any part of said note of $7000 paid out of the proceeds of the sale of the brig Olympia, mentioned in the deed J. P. No. 1? and, if so, how much? Who sold the brig, and received and applied the money, and how was it applied?

19th. Did any of the property or effects of John Peter, mentioned in the deed J. P. No 1, or in any way owned by him, and not in said deed, or the proceeds thereof, (other than the notes and bills of lading before spoken of by you,) come to your hands or possession, or were they applied for your use and benefit as endorser of John Peter, or for the benefit of the Farmers and Mechanics' bank, to pay debts of John Peter due that bank?

20th. Was T. B. Beall a stockholder in the Farmers and Mechanics' Bank on the 1st January, 1820, to what amount, and did he continue so till his death in September, 1820?

21st. Please state the periods when the notes given to you by John Peter, under the deed of trust J. P. No. 1, were paid? Please also return with your deposition a copy of your account as trustee of John Peter, opened by you in the bank, and also a copy of John Peter's account with the Farmers and Mechanics' Bank, from the 1st January, 1820, till the close of the account?

Answers of Clement Smith to the additional interrogatories of the Defendants.

To the 16th and 17th, he says: On referring to the original papers of John Peter in bank, I find that the note of $7000 was made payable to C. Smith, cashier: consequently the security, whatever it might have been, was given to the bank, and I am inclined to believe that that security was flour: the note is in the handwriting of John Peter.

To the 18th, he says: It will be seen by the account herewith exhibited, (and marked C. S. on the back,) that the proceeds of the sale of the brig Olympia was disposed of by the order of the court, with the funds arising from the sale of the merchandise.

To the 19th. I have no recollection, nor do I believe that any of John Peter's property ever came into my hands, other than what is stated in the account before referred to, except the proceeds of the bill of lading also before mentioned.

To the 20th, he says: Thomas B. Beall was proprietor of stock in the Farmers and Mechanics' Bank of Georgetown, on the first of January, 1820, to the amount of $15,125, and, in the month of September of the same year, to the amount of $15,775.

To the 21st, he says: The account referred to, in the answer to the 18th interrogatory, answers the first part of this interrogatory, and the account of John Peter, herewith annexed, from the 15th February, 1820, the period of a prior settlement, when all vouchers were delivered up to him, answers the residue.

WASHINGTON COUNTY, *District of Columbia:*

On this 4th day of May, 1830, appeared C. Smith, and made oath on the Holy Evangelist of Almighty God that the preceding answers are true.

Sworn before me, a justice of the peace for the county aforesaid.
GEO. NAYLOR, *J. P.*

A. B.--J. Peter's order on C. Smith to pay G. Peter.

SIR: Pay to George Peter, or order, seventeen hundred and fifty dollars, in full of all his share and proportion of the fund in your hands, executed by you under assignment from me, and to be distributed under the decree of the circuit court of the District of Columbia.

JNO. PETER,
22d February, 1822.

CLEM. SMITH, Esq.

Dr. C. Smith, Trustee. *John Peter, Cr.*

C. S.

1821	G. Peter,	$1750	1820 Aug.	21	J. Thompson,	$ 77	66
"	Corrys,	500		24	J. D. Scott,	61	80
"	G. C. Washington,	600	Oct.	21	S. E. Scott,	127	75
1822	W. Bowie,	2250	"		R. Ober,	158	05
	C. S.	150	"		Wm. Talbot,	192	66
	Expenses,	11	"		T. Hughes,	106	50
			Dec.	22	D. Renner,	272	90
			"		J. Gettys,	832	75
				23	R. Jones,	500	22
			"		R. Kirby & Co.	448	97
			"		F. Carie,	223	18
			July	22	Cash,	95	09
			1821 Aug.	10	J. Kurtz, proceeds of the brig Olimpia	1125	
			Nov.	10	do. do.	1125	

Dr. Farmers and Mechanics' Bank in ac. *John Peter, Cr.*

	To bal. cks. deld.	$ 125	42	Feb. 22	By J. G. Ford,	$ 338	
Feb. 16	To disct.	146	76	"	" Your note,	523	32
"	" disct.	138	81	24	" W. Little,	950	
"	" disct.	148	73	"	" Your note,	4,000	
22	" cash,	239		25	" do.	1,300	
16	" disct.	98	93	27	" Tobo.	100	
23	" do.	3,957	33	28	" Flour,	1,000	
24	" cash,	475			" do.	1,000	
"	" do.	500			" Tobo.	500	
25	" do.	1,300		29	" Flour,	500	
26	" csh T. Henderson	82	37	Mar. 1	" do.	500	
Mar. 1	" disct.	4,946	67	"	" do.	500	
"	" dis.	6,977	83	"	" do.	4,181	92
6	" dep.	265	32	"	" J. Forman,	224	82
7	" do.	1,976	67	2	" Flour,	400	
8	" disct.	197	87	"	" Note,	5,000	
"	" do.	2,995		"	" Jno. Lyons,	399	18
15	" cash,	190		8	" Flour,	1,000	
"	" disct.	1,262	77	9	" do.	500	
"	" dis.	156	37	10	" do.	500	
17	" cash,	12,508	92	11	" Note,	340	20
"	" disct.	198		"	" do.	340	31
22	" disct.	2,102	34	"	" do.	140	
"	" disct.	2,069	43	14	" Brig O.	1,000	
25	" disct.	4,204	67	"	" do.	1,000	
April 5	" cash,	852	75	15	" Flour,	3,500	
July 13	" cash,	2,949	18	"	" Ran Morgan,	79	40
				16	" Flour,	1,000	
				18	" Jno. Strider,	2,770	50
				"	" Flour,	300	
				19	" Note,	3,000	
				20	" Flour,	1,000	
				21	" T. Peter,	118	79
				"	" Flour,	1,000	
				27	" do.	2,000	
				28	" do.	200	
				31	" Notes,	50	
				"	" Flour,	750	
				April 5	" Wm. Whann,	2,204	67
				July 13	" Note and int.	7,054	98
		51,066	09			51,066	09

J. Kurtz's certificate.

I hereby certify that I purchased the brig Olympia on the 7th August, 1820, for $4,500—

One half of Wm. G. Ridgely, payable in 9 and 12 months, } $ 2,250

The other half of Clement Smith, payable in 12 and 15 months, } 2,250

In all—4,500

And that the notes given for the purchase, were paid at maturity.

J. KURTZ.

17*th March*, 1830.

Thereupon, further process, of and upon the premises aforesaid, is, by consent of said parties, and by order of the court, continued until the first Monday of December next.

At which said first Monday of December, in the year 1830, come again into court the parties, by their solicitors aforesaid: thereupon, the defendants, by their solicitor afosesaid, file here the following affidavits:

CORPORATION OF LEESBURG, *sct.*

John Rose personally appeared before me, Saml. M. Edwards, mayor of the town of Leesburg, in the State of Virginia, and made oath that, after the death of Thos. B. Beall, of Georgetown, D. C. he found among the papers of said Beall, carefully put away, the mortgage from Jno. Peter to said Beall, for the lots and premises in Georgetown, in the District of Columbia, purchased by said Peter of the heirs of Jno. Beall, deceased; that, with said mortgage, were the three bonds of said Peter for one thousand dollars each; that he consulted Walter Jones on the same, and afterwards left the said mortgage with Jas. C. Wilson, esq., of Georgetown, to obtain the opinion of Robert I. Taylor, esq. on it; and that he has not since seen said mortgage, and has always supposed that the same was delivered by said Wilson to affiant's lawyer in the case case of Thos. B. Beall's executors against John Peter and others, defending in the United States' circuit court for Washington county, D. C., sitting as a court of chancery; that he has diligently searched among his papers for said mortgage, and cannot find it. He further states that there was no endorsement on said mortgage, nor any thing else going to show that said mortgage was paid off or settled.

In testimony whereof, I have hereunto set my hand, and affixed my official seal, this 19th day of May, 1830.

SAML. M. EDWARDS, [L. S.]

J. C. Wilson's affidavit.

On this fifth day of June, in the year 1830, personally appears before me, James C. Wilson named in the preceding deposition of John Rose, and makes oath on the Holy Evangelist of Almighty God that he well remembers to have seen the mortgage mentioned in the preceding deposition, but does not know where the same is, or what has been done with it; he does not remember that he ever carried the same to Robert I. Taylor for an

opinion; that he has carefully examined among his papers, and cannot find the same. This deponent accompanied the said John Rose on his visit to Walter Jones, esq., and well remembers that the said mortgage was submitted, with other papers, to said Jones for an opinion, and he has never seen the said papers since, to the best of his knowledge. JAS. C. WILSON.

Sworn and subscribed before me, this 5th day of June, 1830.
RICHMOND JOHNSON, *J. Peace.*

WASHINGTON COUNTY, *District of Columbia.*

Stephen B. Balch's affidavit.

On the 3d day of August, in the year 1830, personally appears Stephen B Balch, one of the executors of Thomas B. Beall, late of Georgetown, deceased, before the subscriber, a justice of the peace in and for the county aforesaid, and made oath on the Holy Evangelist of Almighty God that he has diligently examined among his papers for an original deed of mortgage executed by John Peter to secure a debt due by said Peter to the said Beall, and has not been able to find the same; that, to the best of his knowledge and belief, the said deed of mortgage never was, and is not now in the possession of the deponent. On the contrary, he believes that the same was taken into the possession of his co-executor, John Rose, for consultation and suit.

In testimony whereof, I have hereunto set my hand and seal the date above written.

JOHN THRELKELD, [SEAL.]

Thereupon, further process of and upon the premises aforesaid, is, by consent of said parties, and by order of the court, continued until the first Monday of May next.

And now, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-one, come again into court, as well the complainants by their solicitor, as the defendants by their solicitor: thereupon, the court make the following decree, to wit:

Decree.

This cause having been duly set down for hearing on the bill of complaint, the bill of revivor, and the several answers of the defendants thereto, and the general replication to said answers, with exhibits and depositions filed in the said cause; and the said cause having been argued by counsel, and considered by the court; and it appearing to the court that there is justly due and owing from the said John Peter to the complainants, as executors as aforesaid, the sum of two thousand dollars, with interest thereon from the first day of May, in the year eighteen hundred and eleven, deducting therefrom the sum of $614, $\frac{43}{100}$ which was paid to said Beall on the first day of January, 1820; and that there is also due and owing to said complainants, as executors as aforesaid, the further sum of one thousand dollars, with interest thereon from the first day of May, in the year 1809. It is therefore, this 20th day of June, in the year 1831, by the court ordered, adjudged, and decreed that, unless the defendants, or some one of them, bring into this court, on or by the first day March next, the sum of two

thousand dollars current money, with interest thereon from the first day of May, in the year 1811, crediting $614 $\frac{44}{100}$ paid said Beall, on the first day of January, 1820; and also bring into court on or before the day aforesaid, the sum of one thousand dollars current money, with interest thereon from the first day of May, in the year 1809; to be paid to the said complainants in satisfaction of the debt due from the defendant, John Peter, to the complainants' testator, and charged by mortgage on the premises mentioned and described in the complainants' bill of complaint; and on the failure of the defendants to bring the said several sums of money, with interest thereon as aforesaid, into court, by the day so limited for the payment thereof, then the land and premises mentioned and described in the complainants' bill of complaint shall, and the same is hereby, ordered, adjudged, and decreed, to be sold for the payment of the said debt, interest, and cost of this suit; and John Marbury, of Georgetown, District of Columbia, is hereby appointed trustee to effect the sale of said premises, and the course and manner of his proceeding shall be as follows, to wit: he shall file a bond with the clerk of this court in the penal sum of ten thousand dollars, with surety to be approved by one of the judges of this, and conditioned for the faithful performance of the trust hereby reposed in him, or which may be reposed in him by any future order or decree of this court in the premises. He shall sell the said premises at public auction, in one lot or parcel, or in such lots or parcels as shall to him seem best for the interest of the said complainants, and on a credit of twelve, eighteen, and twenty-four months, taking from the purchaser or purchasers their bonds, with surety to be approved by the said trustee, for the said purchase money, bearing interest from the day of sale. He shall, before making any such sale, give notice of the time, place, and terms of sale, by advertisement in a newspaper published in Georgetown, at least twenty days before the day of sale. The said trustee shall report his proceedings to this court at the term thereof next after he shall make a sale, with an affidavit there under written of the truth of such report, and the fairness of such sale. And when he shall have received the purchase money, he shall bring the same into this court, to be there subject to their further order. And the said premises, when the purchase money shall have been paid, and upon the final ratification of the sale or sales by this court, but not before, the trustee shall convey in fee to the respective purchasers thereof.

By order of the court:

Test: W. BRENT, *Clerk.*

20th June, 1831.

Statement by the court.

Memorandum.—At the time of making the above decree, the court made and filed in the cause the following statement:

The cause aforesaid was brought to final hearing, and was argued by counsel as in the decree and proceedings mentioned, upon the bills, &c., and all the papers in the decree and proceedings mentioned and set forth, except the said affidavits of John Rose, Stephen B. Balch, and Jos. C. Wilson, in the proceedings set

forth, which were not then filed. The original mortgage in the bill and proceedings mentioned not being produced, and no other evidence of the same, but the record and enrolment of the same, from the land records of this county, a copy of which was exhibited with the original bill. At which hearing and argument, the counsel for the defendants, in the course of their argument on behalf of defendants at such hearing, among other objections to the relief prayed by the bill, objected to the absence and non-production of the said original mortgage, and insisted in argument that the non-production of that instrument raised a presumption that the said mortgage had been satisfied and cancelled in execution of the release in the proceedings mentioned, or for other cause not appearing. Upon which argument, the said cause, with all the papers, except the said affidavits, was submitted to the court for a final decree; and the court then adjourned, holding the said papers under advisement for a final decree, the cause having been so held under advisement from the time of the said argument to the time of rendering said decree. During which adjournment, and while the said cause was under advisement as before said, the complainants filed the said affidavits, and afterwards obtained leave to amend their bill for the purpose of introducing the matter of the said affidavits; but afterwards waived such amendments, and relied upon the said affidavits so filed as aforesaid; and the defendants adhering to their original objection founded on the non-production of the original mortgage, objected to the introduction of said affidavits into the cause, and to the competency and sufficiency of the same to repel the original objection. But the court now at this term, upon rendering the said decree, overruled the objection to the introduction of the said affidavits, admitted the same as evidence in the cause, for the purpose solely of accounting for the non-production of the said original mortgage, and proceeded to pronounce said decree upon consideration of those affidavits, in connection with the other evidence in the cause. To the admission of which affidavits, for the purpose aforesaid, or for any other purpose, the defendants still object, and pray that all their just exceptions to the same may be reserved, notwithstanding the introduction of the same among the papers of the cause as aforesaid. It is further admitted that the counsel for complainants did, at the argument of the cause as aforesaid, and upon the objection founded on the non-production of the original mortgage as aforesaid, state to the counsel for defendants, and to the court, that they would, before the rendition of the final decree, offer affidavits accounting for the non-production of said mortgage, but could not then do it on account of their client's residence being forty miles from this place; but no order was asked or made relative to the same. The objections of the defendants to the filing of his said affidavits, and to their being at all considered in the cause, was notified to complainants immediately on the filing of the same.

The foregoing seems to us to be a correct statement of facts.

W. CRANCH,

20th June, 1831.

JAMES S. MORSELL.

And thereupon, the said defendants, by their solicitor aforesaid, prayed an appeal from the decree so as aforesaid rendered, to the Supreme Court of the United States, and it is granted them. Whereupon, they filed in court here an appeal bond, (a copy whereof is hereunto annexed,) which being read and heard, and the sureties in the said bond being approved, and having at the same time filed in court here the United States' writ of error, it is therefore ordered by the court, that the record of proceedings aforesaid, in the cause aforesaid, with all things thereunto relating, be transmitted to the said supreme court, and the same are transmitted accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the seal of the said circuit court for the county aforesaid, at the city of Washington, this 24th of July, 1831.

WM. BRENT, *Clerk.* [L. S.]

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the decree, in a cause which is in the said circuit court before you, or some of you, between Stephen B. Balch and John Rose, executors of Thomas B. Beall, complainants, and Margaret Dick, George Peter, Thomas Peter, and James B. Beverly, and Jane his wife, Elizabeth Peter, William, Hamilton, and James Peter, children of David Peter, defendants; a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if a decree be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said supreme court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the customs of the United States should be done.

Witness, the honorable John Marshall, chief justice of the said Supreme Court.

Issued this 5th day of July, 1831.

WM. BRENT,
Clk. Ct. Ct. Dist. Col. co'ty of Washington.

Citation.

UNITED STATES OF AMERICA,
District of Columbia, Washington County, } ss.

To Stephen B. Balch and John Rose, executors of Thomas B. Beall, greeting:

You are hereby cited, and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of August next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Margaret Dick, George Peter, Thomas Peter, and James B. Beverly, and Jane his wife, Elizabeth Peter, William, Hamilton, and James Peter, children of David Peter, are complainants in error, and you are defendants in error, to show cause, if any there be, why the decree rendered against the said complainants in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court of the District of Columbia, this 5th day of July, 1831.

Service acknowledged this 5th day of July, year 1831.
JNO. MARBURY,
Atty. for the Execrs. of T. B. Beall.

Copy of Appeal Bond.

Know all men by these presents, that we, Margaret Dick, Thomas Peter, and Robert Dick, are held and firmly bound unto Stephen B. Balch and John Rose, in the full and just sum of two hundred dollars current money, to be paid to the said Stephen B. Balch and John Rose, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of June, one thousand eight hundred and thirty-one.

Whereas, lately, at a circuit court of the United States for the District of Columbia, in the county of Washington, sitting as a court of equity, in a cause wherein the said Stephen B. Balch and John Rose, executors of Thomas B. Beall, were complainants, and Margaret Dick, George Peter, Thomas Peter, and James B. Beverly, and Jane his wife, Elizabeth Peter, William, Hamilton, and James Peter, children of said David Peter, were defendants; a decree was rendered against the said defendants; and they having entered an appeal to the Supreme Court of the United States:

Now, this condition of the above obligation is such, that if the said Margaret Dick, George Peter, Thomas Peter, and James B.